



NEWPORT BEACH

City Council Staff Report

June 13, 2023
Agenda Item No. 21

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Ordinance No. 2023-10: Code Amendment Establishing the "VE" Special Flood Hazard Area Overlay District (PA2018-075)

ABSTRACT:

For the City Council's consideration are amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) to establish a new Special Flood Hazard (VE) Overlay District. The VE Overlay District would modify design standards for new residential development for properties designated by the Federal Emergency Management Agency (FEMA) as being in the VE Special Flood Hazard Area (VE Zone). New development within the VE Zone is required to meet FEMA construction design criteria, which includes elevating the finished floor of new residential structures approximately 3 to 5 feet above existing grade to avoid flood hazards.

Due to the complexity of complying with FEMA construction design criteria and the City's current design standards, the proposed ordinance is meant to provide the property owner with flexibility in the design of their home. The proposed VE Overlay District would allow raised walkways, decks and stairs with necessary guardrails and handrails to encroach into the front, side and rear setback areas to provide reasonable use and site access. The raised decks and walkways would be elevated similarly to the required elevated finished floor of the new residential structure.

RECOMMENDATIONS:

- a) Conduct a public hearing;
- b) Find the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act (CEQA) in accordance with Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment. The amendments themselves do not authorize development that would directly result in physical change to the environment. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program;

- c) Waive full reading, direct the City Clerk to read by title only, and introduce Ordinance No. 2023-10, *An Ordinance of the City Council of the City of Newport Beach, California, Amending Title 20 (Planning and Zoning) of the Newport Beach Municipal Code to Establish the Special Flood Hazard (VE) Overlay District (PA2018-075)*, and pass to second reading on June 27, 2023; and
- d) Adopt Resolution No. 2023-37, *A Resolution of the City Council of the City of Newport Beach, California, Authorizing Submittal of a Local Coastal Program Amendment to the California Coastal Commission to Amend Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code to Establish the Special Flood Hazard (VE) Overlay District (PA2018-075)*.

BACKGROUND:

On March 21, 2019, new FEMA Flood Insurance Rate Maps (FIRMs) went into effect in Newport Beach. The new maps include the designation of a Special Flood Hazard Area (VE Zone) affecting 166 beachfront properties in West Newport, between 24th Street and 48th Street. Figure 1 below is an excerpt of the FIRM with the affected beachfront properties identified by a red oval.

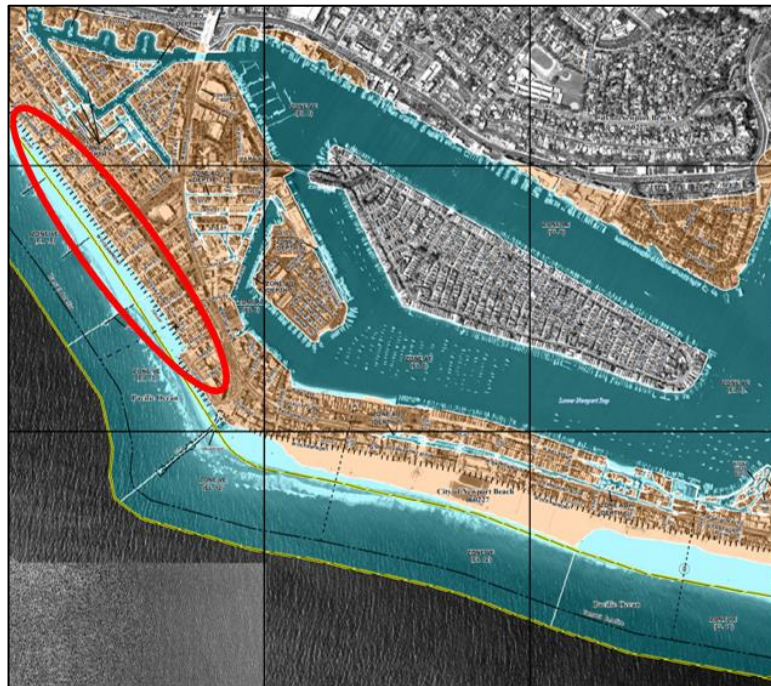


Figure 1 – Excerpt from the FIRM for West Newport

Design Criteria for VE Zone Properties

New development and substantial remodels within the VE Zone are required to meet FEMA construction design criteria. This includes using pilings, posts, piers or columns to raise the main residential structure approximately 3 to 5 feet above the ground. The area below the elevated floor must be open and free of obstructions. In the event of wave action, these structures are designed and engineered to allow water to flow under the elevated floor system without damaging the foundation or creating substantial debris.

Of the 166 affected properties, 27 properties are in the “VE 13” area and require structures to be elevated by approximately 3 feet above the existing grade. The remaining 139 properties are in the “VE 15” area and require structures to be elevated approximately 5 feet above the existing grade. Figure 2 below provides a map of affected properties with the VE 13 designation shown in purple and the VE 15 designation shown in yellow.

Figure 3 on the following page provides an example section of a raised foundation on caissons.

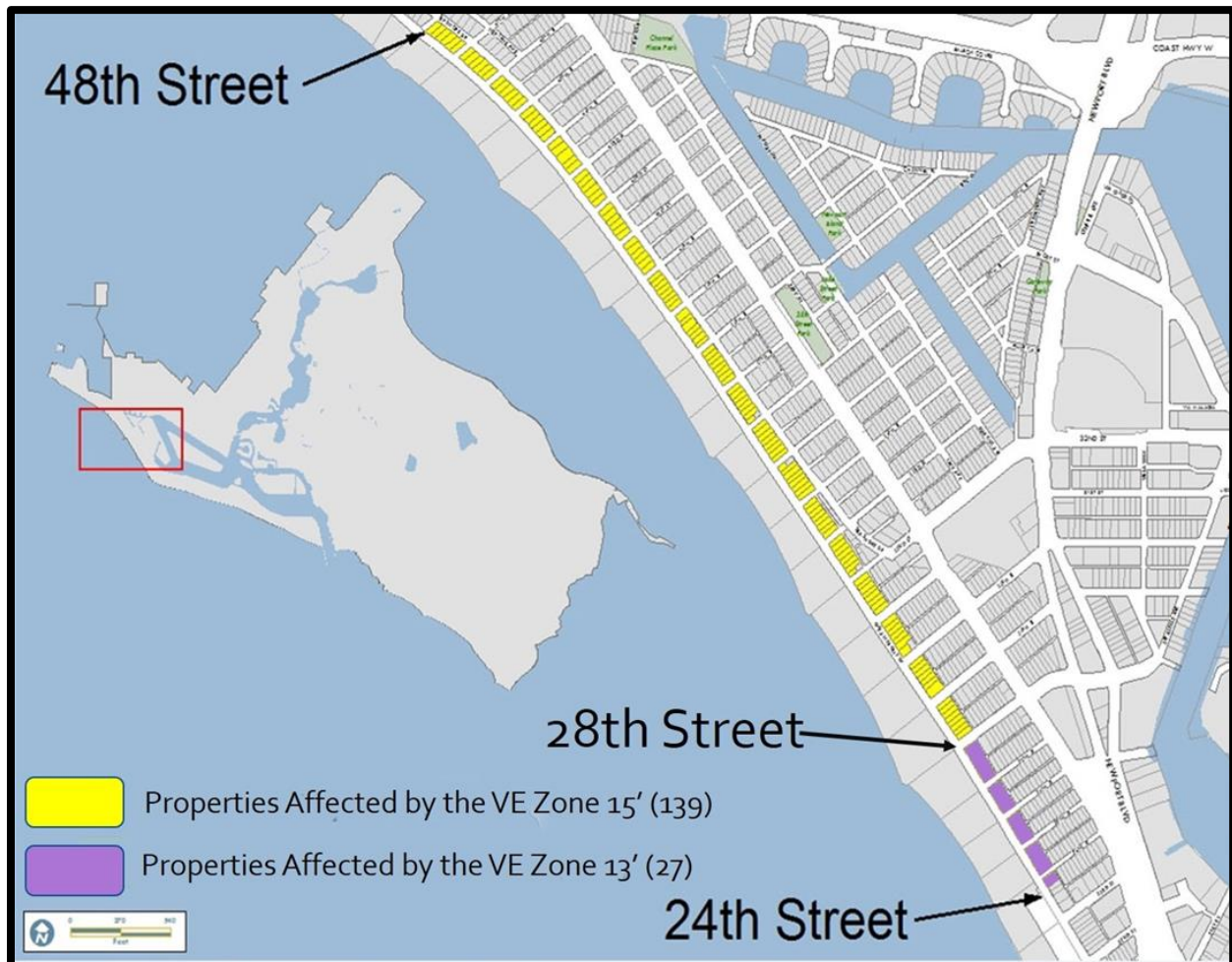


Figure 2 – Map of Affected Properties

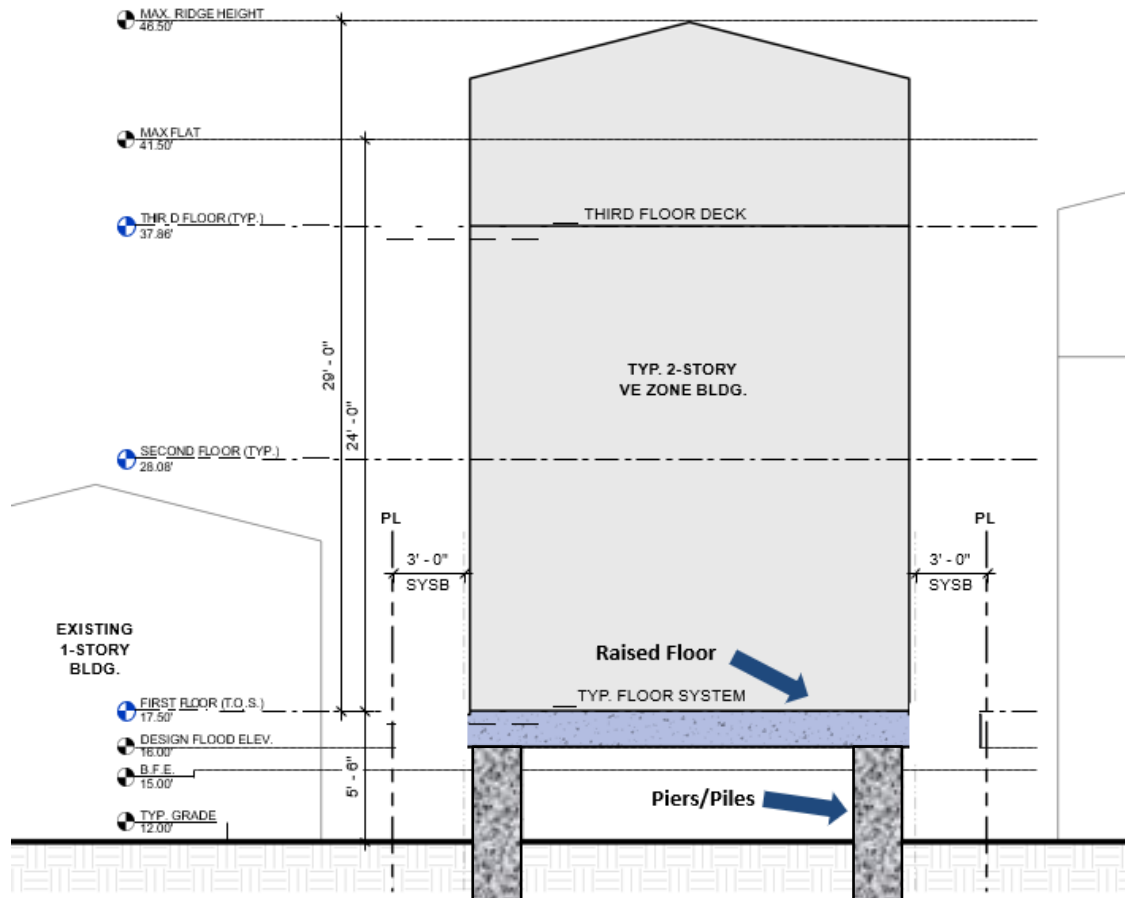


Figure 3 – Section of Raised Foundation

Compliance with FEMA’s VE Zone design criteria presents several challenges for new residential development to meet the City’s requirements of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC. Specifically, the VE Zone design criteria significantly limits means of access to the dwelling, as well as the usability of outdoor areas. The proposed amendments seek to remedy the challenges related to access and usability of outdoor areas.

Lack of Beach Access

Typical residential properties along the beach and boardwalk can achieve seamless indoor and outdoor living with front patios along the sand or boardwalk. As of the effective date of the new FIRMs, properties in the VE Zone are no longer able to achieve this design for new construction since their finished floors are elevated well above the beach or boardwalk. The existing residential development standards in the NBMC limit the height of accessory structures to 42 inches maximum within the front setback. However, in the VE Zone, no patios or decks attached to the principal structure can be located below the elevated first floor. This significantly limits outdoor living space for the affected properties. Furthermore, no direct access to the ground is provided, as the required stairs and handrails or guardrails exceed allowable height limits in the front setback.

Similarly, access is challenging for properties in the VE zone. The current NBMC limits steps, landings, platforms and similar features to 18 inches from existing grade in the side and rear setback. An 18-inch-high platform is not sufficient to reach the first floor of the new structure.

Proposed Solution – Code Amendment

The proposed code amendment will allow for raised landings, decks, patios, platforms, stairs, railings, handrails and terraces to exceed the maximum height limits for accessory structures within the front, side and rear yard setbacks for new residential construction within the VE Zone.

The proposed code changes would allow direct access to the dwelling from the setback without the need to reduce the floor area of the dwelling to accommodate the stairs outside the setbacks. The required handrails or guardrails would also be allowed as part of the amendment to accommodate access in the setback areas.

The amendment will provide parity between residential properties located in the VE Zone and typical residential properties throughout the Coastal Zone.

Simulations

Visual impacts related to the proposed encroachments have been generated using 3D models to compare hypothetical residential structures with and without the encroachment areas. Figure 4 below and on the next page shows the difference between a potential new residential structure that was built with encroachments, and one that was built based on the existing code prior to any amendments. Both comply with FEMA’s design criteria.





Figure 4 – Visual Simulations of New Development Without and With Encroachments

City Council Initiation

On March 26, 2019, the City Council adopted Resolution No. 2019-31, initiating an amendment to Title 20 and Title 21 of the NBMC to modify the setback encroachment regulations for residential properties in the VE Flood Hazard Area. Specifically, the proposed amendment is intended to resolve conflicts in the NBMC related to height allowances in setbacks that limit or eliminate access and usability of front, side and rear setbacks.

Public Engagement

The proposed amendments were presented to the design community on December 2, 2021, and to affected and nearby property owners on January 19, 2022, via virtual community meetings. The recommended allowance for site access encroachments into the front and side setbacks were generally supported. However, several residents raised concerns with respect to maintaining the privacy of adjacent properties, sight distance and safety impacts for corner-lot properties, and visual impacts for properties located behind VE properties. The proposed code amendments contained in the draft resolution and ordinance incorporate language that is responsive to and addresses the comments from the public to the greatest extent practicable.

City Council - Study Session

A study session was held with the City Council on July 26, 2022, to discuss the proposed amendments and provide exhibits showing the potential design of new residential structures built in compliance with the VE Zone requirements. The exhibits showed the anticipated conditions or designs with and without the proposed code amendment. Affected owners in the VE Zone and owners within the vicinity of the VE Zone were provided a courtesy notice of the public meeting and a City “Newsplash” was posted online. At the conclusion of the study session, the City Council directed staff to complete the code amendments allowing maximum utility of setback areas and to prepare the draft language for review by the Planning Commission.

Planning Commission Public Hearing and Recommendation

On May 4, 2023, the Planning Commission considered the proposed amendments (staff report – Attachment E) and adopted Resolution No. PC2022-022 (Attachment C) by a unanimous vote, recommending approval of the Code Amendment to the City Council and recommending the City Council to authorize submittal of the Local Coastal Program Amendment to the California Coastal Commission. Meeting minutes are included as Attachment D.

During the public comment portion of the hearing, one member of the public, Mr. Jim Mosher, provided suggestions on the draft code language for clarity purposes. Staff has considered the proposed suggestions and incorporated them as appropriate in the attached resolution and ordinance. Additional written comments were submitted prior to the hearing and are included as Attachment F. One commenter had questions, two commenters expressed concerns related to visual impacts to adjacent homes and the neighborhood, and one property owner in the VE Zone expressed support of the amendments.

California Coastal Commission Submittal

If approved by the City Council the amendment will be submitted to the California Coastal Commission (Commission) for their review and consideration. Staff anticipates the amendment would be considered by the Commission within one year of submittal.

FISCAL IMPACT:

There is no fiscal impact related to this item.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act (CEQA) under Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in a physical change to the environment, directly or indirectly.

This action would also be considered exempt from CEQA pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.

The Class 5 exemption allows minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density. The proposed amendment seeks to provide flexibility for potential encroachments into side, rear and front setback areas for properties located within the VE Zone. The proposed changes to the NBMC could result in raised decks, landings, stairs and other accessory features in the front, side and rear setbacks for the affected properties. All changes are limited in scope and would only alter regulations for the height of accessory structures, which would not result in any changes to land use intensity or density.

The exceptions to this categorical exemption under Section 15300.2 are not applicable. The affected location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program.

NOTICING:

Pursuant to Section 13515 of the California Code of Regulations, a review draft of the LCP Amendment was made available, and a Notice of Availability was distributed on May 2, 2023, to all persons and agencies on the Notice of Availability mailing list.

Notice of this hearing was published in the *Daily Pilot*, mailed to all owners of property within 300 feet of the boundaries of the properties in the VE Special Flood Hazard Area (excluding intervening rights-of-way and waterways) and posted near the end of the properties in the VE Special Flood Hazard Area at least 10 days before the scheduled meeting, consistent with the provisions of the NBMC. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

ATTACHMENTS:

- Attachment A – Ordinance No. 2023-10 (Title 20 Amendments)
- Attachment B – Resolution No. 2023-37 (Title 21 Amendment)
- Attachment C – Planning Commission Resolution No. PC2023-022
- Attachment D – May 4, 2023 Planning Commission Meeting Minutes
- Attachment E – May 4, 2023 Planning Commission Staff Report
- Attachment F – Written Correspondence

Attachment A

Ordinance No. 2023-10 (Title 20 Amendments)

ORDINANCE NO. 2023-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING TITLE 20 (PLANNING AND ZONING) OF THE NEWPORT BEACH MUNICIPAL CODE TO ESTABLISH THE SPECIAL FLOOD HAZARD (VE) OVERLAY DISTRICT (PA2018-075)

WHEREAS, Section 200 of the City of Newport Beach ("City") Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, on March 21, 2019, new Federal Emergency Management Agency ("FEMA") Flood Insurance Rate Maps ("FIRM") went into effect for Newport Beach and includes the new designation of a Special Flood Hazard Area ("VE Zone") affecting 166 beachfront properties in the West Newport area between 24th Street and 48th Street;

WHEREAS, new development within the VE Zone must meet FEMA construction design criteria including elevation of structures with pilings, posts, piers, or columns to raise the main residential structure approximately three to five feet from existing grade so that these structures are designed and engineered to allow water to flow below the elevated floor system without damaging the foundation or creating substantial debris;

WHEREAS, of the 166 affected properties, 27 properties are within the VE 13 Zone and require elevating structures approximately three feet above existing grade while the remaining 139 properties are within the VE 15 Zone and require elevating structures approximately five feet above existing grade;

WHEREAS, compliance with the VE Zone design criteria presents several challenges for new residential development to also meet the requirements of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code ("NBMC") since compliance with the VE Zone design criteria significantly limits means of access to the dwelling, as well as the usability of outdoor areas;

WHEREAS, on March 26, 2019, the City Council adopted Resolution No. 2019-31 initiating an amendment to Title 20 ("Zoning Code Amendment") and Title 21 ("Local Coastal Program Amendment") of the NBMC to modify the setback encroachment regulations for residential properties in the VE Zone;

WHEREAS, since adoption of the new FIRM, the City has received three variance requests for new residential projects in the VE Zone seeking relief from the setback standards in Titles 20 and 21 of the NBMC that directly conflict with the ability to comply with FEMA's VE Zone design criteria;

WHEREAS, approval and implementation of the Zoning Code Amendment and Local Coastal Program Amendment would facilitate compliance and is likely to result in fewer variance requests in the VE Zone;

WHEREAS, the affected properties are categorized as RS-D (Single Unit Residential Detached) and RT (Two Unit Residential) by the General Plan Land Use Element and are located within the R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential) Zoning Districts;

WHEREAS, the affected properties are located within the Coastal Zone with a Coastal Land Use Plan category of RSD-D (Single Unit Residential Detached – 20.0-29.9 DU/AC) and RT-E (Two Unit Residential – 30.0 – 39.9 DU/AC) and Coastal Zoning District designations of R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential);

WHEREAS, a draft of this Local Coastal Program Amendment was presented to the design community on December 2, 2021, and to affected and nearby property owners on January 19, 2022, via virtual community meetings with comments incorporated into the proposed amendments to the extent feasible;

WHEREAS, the Planning Commission held a duly noticed public hearing on May 4, 2023, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, at the conclusion of the public hearing, the Planning Commission adopted Resolution No. PC2023-022 by a unanimous vote (7 ayes, 0 nays) recommending approval of the Zoning Code Amendment and Local Coastal Program Amendment to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on June 13, 2023 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapter 20.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: The City Council does hereby approve the Zoning Code Amendment as set forth in "Exhibit A," based upon the Facts in Support of Zoning Code Amendment set forth in Exhibit "B," both of which are attached hereto and incorporated herein by reference.

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds this Zoning Code Amendment is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the California Code of Regulations, Title 14, Division 6, Chapter 3, (“CEQA Guidelines”) because it has no potential for resulting in physical change to the environment, directly or indirectly.

The City Council also finds this Zoning Code Amendment is categorically exempt from CEQA pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment. The Class 5 exemption allows minor alterations in land use limitations in areas with an average slope of less than twenty percent, which do not result in any changes in land use or density. The Zoning Code Amendment seeks to provide flexibility for potential encroachments into side, rear, and front setback areas for properties located within the VE Zone. The proposed changes to the NBMC could result in raised decks, landings, stairs, and other accessory features in the front, side, and rear setbacks for the affected properties. All changes are limited in scope and would only alter regulations for the height of accessory structures, which would not result in any changes to land use intensity or density.

The exceptions to this categorical exemption under Section 15300.2 are not applicable. The affected location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

Section 5: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the NBMC shall remain unchanged and shall be in full force and effect.

EXHIBIT "A"

ZONING CODE AMENDMENT (PA2018-075)

- I. Section 20.28.010 (Purposes of Overlay Zoning Districts) of the NBMC is amended to add subsection (E) to read as follows:

E. Special Flood Hazard Area (VE) Overlay Zoning District. The VE Overlay District is intended to modify certain development standards for properties subject to special flood hazards as identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Orange County, California and Incorporated Area with accompanying FEMA Flood Insurance Rate Maps (FIRM).

- II. The title of Chapter 20.28 Overlay Zoning Districts (MHP, PM, B, H) shall be amended to read as follows:

Sections:

- 20.28.010 Purposes of Overlay Zoning Districts.**
- 20.28.020 Mobile Home Park (MHP) Overlay Zoning District.**
- 20.28.030 Parking Management (PM) Overlay District.**
- 20.28.040 Bluff (B) Overlay District.**
- 20.28.050 Reserved.**
- 20.28.060 Height (H) Overlay District.**
- 20.28.070 Special Flood Hazard Area (VE) Overlay District.**

- III. Section 20.28.070 (Special Flood Hazard Area (VE) Overlay District) of the NBMC shall be added to read as follows:

Section 20.28.070 Special Flood Hazard Area (VE) Overlay District.

- A. Applicability. This section applies to encroachments for residential properties located in the coastal high hazard area as defined in Chapter 15.50 (Floodplain Management) and identified as VE 13 or VE 15 on the adopted FEMA FIS and FIRM pursuant to Section 15.50.070 (Basis for Establishing the Areas of Special Flood Hazard). For purposes of this section, "encroachments" are limited to decks, landings, patios, platforms, porches, steps, raised walkways, or terraces required for access. With the exception of the encroachments authorized herein, all development shall comply with the applicable residential development standards (e.g., floor area limit, setbacks, parking) of the underlying zoning district set forth in the NBMC. In situations where an inconsistency occurs between the development standards of the underlying zoning district and the standards in this section related to encroachments, the standards related to encroachments in this section shall apply.

The encroachments allowed by this section shall only apply to new construction, substantial damage, or substantial improvements to the structure pursuant to Section 15.50.200 (Coastal High Hazard Areas) for residential properties where the structure is required to raise the foundation above the design flood elevation.

- B. Allowed Encroachments in Side and Rear Setbacks. An encroachment may be located within a required side or rear setback area other than those abutting an alley subject to the following restrictions:
1. The design of the encroachment shall comply with the building standards set forth in Section 15.05.100 (Amendment to Section R301.2.4) and either of the following:
 - a. Chapter 15.50 (Flood Plain Management); or
 - b. The Flood Resistant Design and Construction publication by the American Society of Civil Engineers (ASCE 24).
 2. Access to the side yard setback shall comply with Section 20.30.110(A)(1)(c) (Access to Side Setback Area).
 3. For interior lots, the encroachment may be located in one (1) or more side or rear setback and may extend to the property line abutting the side or rear setback.
 4. For corner lots, the encroachment may be located in the interior side or rear setback. Encroachments in a side or rear setback facing a street may only be permitted to the minimum extent necessary to provide access to the dwelling. The encroachment shall comply with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).
 5. Excluding required guardrails or handrails, the finished surface of the encroachment shall not exceed six (6) inches above the finished floor of the dwelling unit(s).
 6. Guardrails and handrails in the side and rear setback shall be constructed of either transparent material (except for supports) or opaque material (e.g. decorative grillwork, wrought iron, latticework, or similar materials) so that at least forty percent (40%) of the guardrail or handrail is open. Handrails and guardrails shall not exceed the minimum height requirements set forth in the California Building Code for safety purposes.
- C. Allowed Encroachments in Front Setbacks. Encroachments may be located within a required front setback area subject to the following restrictions:

1. The design of the encroachment shall comply with the building standards set forth in Section 15.05.100 (Amendment to Section R301.2.4) and either of the following:
 - a. Chapter 15.50 (Flood Plain Management); or
 - b. The Flood Resistant Design and Construction publication by the American Society of Civil Engineers (ASCE 24).
2. For interior lots, excluding the required guardrails or handrails, the finished surface of the encroachment shall not exceed six (6) inches above the finished floor of the dwelling unit(s).
3. For corner lots, excluding the required guardrails or handrails, the finished surface of the encroachment shall not exceed six (6) inches above the finished floor of the dwelling unit(s) and may extend to the property line abutting the front setback adjacent to the beach or permitted Ocean Front Encroachment areas (Appendix C Ocean Front Encroachment Policy Guidelines of Title 21). Encroachments in a front setback abutting the Ocean Front Boardwalk may be permitted subject to compliance with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).
 - a. Corner lots shall be developed in a manner that ensures visibility across the corners of the intersecting streets, alleys, sidewalks, private driveways, and the Ocean Front Boardwalk. Notwithstanding the requirements of this subsection (C), no encroachment over thirty (30) inches in height from existing grade shall be located within the traffic visibility triangle (i.e. the triangular-shaped area on a corner lot formed by measuring five (5) feet from the intersection of the front and street side property lines adjacent to the Ocean Front Boardwalk).
 - b. Improvements or structures that exceed the allowable height limit for visibility in the traffic safety visibility area may be approved by the City Traffic Engineer if he/she determines that the location and/or height of the existing or proposed improvement or structure, or other obstruction allows for the unobstructed view of oncoming traffic including bicyclists, and pedestrians by a driver, bicyclist, or pedestrian approaching an intersection.
4. Guardrails and handrails in the front setback shall be constructed of either transparent material (except for supports) or opaque material (e.g. decorative grillwork, wrought iron, latticework, or similar materials) so that at least forty percent (40%) of the guardrail or handrail is open. Handrails

and guardrails shall not exceed the minimum height requirements set forth in the California Building Code for safety purposes.

D. Third Floor Limitations. All residential structures shall comply with Section 20.48.180 (Residential Development Standards and Design Criteria). For purposes of determining the number of floors within the principal structure, the garage shall be considered the first level. In the case of a split-level design, the Director shall determine which portions of the split-level structure shall constitute a third floor for the purpose of implementing Section 20.48.180 (Residential Development Standards and Design Criteria).

IV. Subsection (f) shall be added to Section 20.30.110(D)(1) (General Regulations) of the NBMC to read as follows:

f. Special Flood Hazard Area (VE) Overlay. Encroachments allowed by this subsection shall apply to properties within the VE Overlay except as modified by Section 20.28.070 (VE Overlay). See Section 20.28.070 (VE Overlay) for setback regulations and additional authorized encroachments.

EXHIBIT "B"

FACTS IN SUPPORT OF CODE AMENDMENT (PA2018-075)

An amendment to Title 20 (Planning and Zoning) of the NBMC is a legislative act. Neither Chapter 20.66 (Planning and Zoning, Amendments) of Title 20 (Planning and Zoning) of the NBMC, or Article 2 (Adoption of Regulations) of Chapter 4 (Zoning Regulations) of Division 1 (Planning and Zoning) of Title 7 (Planning and Land Use) of the California Government Code set forth any required findings for either approval or denial of such amendments.

Notwithstanding the foregoing, the Zoning Code Amendment is consistent with the City Council's initiation and allows for orderly residential development while protecting property rights, as identified below.

1. The Zoning Code Amendment is consistent with Coastal Land Use Plan Policy 2.7-1 and General Plan Land Use Element Policy LU 5.1.6, which require development to maintain appropriate setbacks for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources. The proposed amendments would only apply to private residential single-unit and two-unit properties and do not authorize any changes to public property.
2. The Zoning Code Amendment does not authorize any new development that will block coastal access, nor does it change the dimensions of setbacks. Instead, it will provide flexibility in the application of height requirements for accessory structures within front, side, and rear setbacks. No changes to density or to maximum height limits of principal structures are proposed as part of this amendment. All new residential development in the VE Zone will require approval of a coastal development permit to evaluate compliance with the Coastal Act, including potential impacts to views and access related to the proposed design and location.
3. Typical residential properties along the beach and boardwalk can achieve seamless indoor and outdoor living with front patios along the sand or boardwalk. As of the effective date of the new FIRMs, properties in the VE Zone are no longer able to achieve this design, as their finished floors are elevated well above the beach or boardwalk. The existing residential development standards in the NBMC limit accessory structures to 42 inches maximum within the front setback. However, in the VE Zone, no patios or decks attached to the principal structure can be located below the first-floor elevation. This significantly limits outdoor living space for the affected properties. Furthermore, no direct access to the ground is provided, as the required stairs and handrails or guardrails exceed height limits in the front setback. The Zoning Code Amendment is therefore necessary to provide parity between residential properties located in the VE Zone and typical residential properties throughout Coastal Zone. The changes will

allow for raised landings, decks, patios, platforms, stairs, railings, and terraces to exceed the maximum height limits for accessory structures within front, side, and rear yard setbacks for new residential construction within the VE Zone.

4. New residential construction and substantial improvements in the VE Zone are required to be elevated approximately three to five feet above existing grade and stairs are necessary to access the dwelling from the ground. Currently, the NBMC limits steps, landings, platforms, and similar features to 18 inches from existing grade in the side and rear setback. An 18-inch-high platform is not sufficient to reach the first floor of the new structure. The Zoning Code Amendment and Local Coastal Program Amendment would allow new residential construction to provide direct access to the dwelling from the side or rear setback without the need to reduce the floor area of the dwelling to accommodate the stairs. The required handrails or guardrails would also be allowed as part of the amendment to accommodate access in the side and rear setback areas.
5. With exception of the changes to allowable setback encroachments, all future development within the VE Zone would remain consistent with unchanged applicable standards of the R-1 and R-2 Zoning Districts. These include setbacks, height, floor area limitations, and parking standards.

Attachment B

Resolution No. 2023-37 (Title 21 Amendments)

RESOLUTION NO. 2023- 37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AUTHORIZING SUBMITTAL OF A LOCAL COASTAL PROGRAM AMENDMENT TO THE CALIFORNIA COASTAL COMMISSION TO AMEND TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) OF THE NEWPORT BEACH MUNICIPAL CODE TO ESTABLISH THE SPECIAL FLOOD HAZARD (VE) OVERLAY DISTRICT (PA2018-075)

WHEREAS, Section 200 of the City of Newport Beach ("City") Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, Section 30500 of the California Public Resources Code requires each county and city to prepare a Local Coastal Program ("LCP") for that portion of the coastal zone within its jurisdiction;

WHEREAS, in 2005, the City adopted the City of Newport Beach LCP Coastal Land Use Plan, as amended from time to time;

WHEREAS, the California Coastal Commission effectively certified the City's LCP Implementation Plan on January 13, 2017, and the City added Title 21 (Local Coastal Program Implementation Plan) ("Title 21") of the City of Newport Beach Municipal Code ("NBMC") whereby the City assumed coastal development permit-issuing authority on January 30, 2017;

WHEREAS, on March 21, 2019, new Federal Emergency Management Agency ("FEMA") Flood Insurance Rate Maps ("FIRM") went into effect for Newport Beach and includes the new designation of a Special Flood Hazard Area ("VE Zone") affecting 166 beachfront properties in the West Newport area between 24th Street and 48th Street;

WHEREAS, new development within the VE Zone must meet FEMA construction design criteria including elevation of structures with pilings, posts, piers, or columns to raise the main residential structure approximately three to five feet from existing grade so that these structures are designed and engineered to allow water to flow below the elevated floor system without damaging the foundation or creating substantial debris;

WHEREAS, of the 166 affected properties, 27 properties are within the VE 13 Zone and require elevating structures approximately three feet above existing grade while the remaining 139 properties are within the VE 15 Zone and require elevating structures approximately five feet above existing grade;

WHEREAS, compliance with the VE Zone design criteria presents several challenges for new residential development to also meet the requirements of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code ("NBMC") since compliance with the VE Zone design criteria significantly limits means of access to the dwelling, as well as the usability of outdoor areas;

WHEREAS, on March 26, 2019, the City Council adopted Resolution No. 2019-31 initiating an amendment to Title 20 ("Zoning Code Amendment") and Title 21 ("Local Coastal Program Amendment") of the NBMC to modify the setback encroachment regulations for residential properties in the VE Zone;

WHEREAS, since adoption of the new FIRM, the City has received three variance requests for new residential projects in the VE Zone seeking relief from the setback standards in Titles 20 and 21 of the NBMC that directly conflict with the ability to comply with FEMA's VE Zone design criteria;

WHEREAS, approval and implementation of the Zoning Code Amendment and Local Coastal Program Amendment would facilitate compliance and is likely to result in fewer variance requests in the VE Zone;

WHEREAS, the affected properties are categorized as RS-D (Single Unit Residential Detached) and RT (Two Unit Residential) by the General Plan Land Use Element and are located within the R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential) Zoning Districts;

WHEREAS, the affected properties are located within the Coastal Zone with a Coastal Land Use Plan category of RSD-D (Single Unit Residential Detached – 20.0-29.9 DU/AC) and RT-E (Two Unit Residential – 30.0 – 39.9 DU/AC) and Coastal Zoning District designations of R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential);

WHEREAS, a draft of this Zoning Code Amendment was presented to the design community on December 2, 2021, and to affected and nearby property owners on January 19, 2022, via virtual community meetings with comments incorporated into the proposed amendments to the extent feasible;

WHEREAS, the Planning Commission held a duly noticed public hearing on May 4, 2023, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing;

WHEREAS, at the conclusion of the public hearing, the Planning Commission adopted Resolution No. PC2023-022 by a unanimous vote (7 ayes, 0 nays) recommending approval of the Zoning Code Amendment and Local Coastal Program Amendment to the City Council;

WHEREAS, pursuant to Title 14 of the California Code of Regulations ("CCR") Section 13515 (Public Participation), drafts of the Local Coastal Program Amendment were made available and a Notice of Availability was distributed at least six weeks prior to the final action date; and

WHEREAS, the City Council held a duly noticed public hearing on June 13, 2023 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the Ralph M. Brown Act and Chapter 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the City Council at this hearing.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council authorizes staff to submit the Local Coastal Program Amendment as set forth in Exhibit "A," based upon the Facts in Support of Local Coastal Program Amendment set forth in Exhibit "B," both of which are attached hereto and incorporated by reference, to the California Coastal Commission.

Section 2: This Local Coastal Program Amendment shall not become effective until approval by the California Coastal Commission and adoption, including any modifications suggested by the California Coastal Commission, by resolution and/or ordinance of the City Council of the City of Newport Beach.

Section 3: The LCP, including this Local Coastal Program Amendment, will be carried out in full conformity with the California Coastal Act.

Section 4: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 5: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 6: The City Council finds this Local Coastal Program Amendment is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"), because it has no potential for resulting in physical change to the environment, directly or indirectly.

The City Council also finds this Local Coastal Program Amendment is exempt categorically from CEQA pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment. The Class 5 exemption allows minor alterations in land use limitations in areas with an average slope of less than twenty percent, which do not result in any changes in land use or density. The Local Coastal Program Amendment seeks to provide flexibility for potential encroachments into side, rear, and front setback areas for properties located within the VE Zone. The proposed changes to the NBMC could result in raised decks, landings, stairs, and other accessory features in the front, side, and rear setbacks for the affected properties. All changes are limited in scope and would only alter regulations for the height of accessory structures, which would not result in any changes to land use intensity or density.

The exceptions to this categorical exemption under Section 15300.2 are not applicable. The affected location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

Section 7: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

ADOPTED this 13th day of June, 2023.

Noah Blom
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

Attachment(s): Exhibit A – Local Coastal Program Amendment (PA2018-075)
 Exhibit B – Facts in Support of Local Coastal Program Amendment
 (PA2018-075)

EXHIBIT "A"

LOCAL COASTAL PROGRAM AMENDMENT (PA2018-075)

- I. Section 21.28.010 (Purposes of Overlay Zoning Districts) of the NBMC is amended to add subsection (F) to read as follows:

F. Special Flood Hazard Area (VE) Overlay Zoning District. The VE Overlay District is intended to modify certain development standards for properties subject to special flood hazards as identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Orange County, California and Incorporated Area with accompanying FEMA Flood Insurance Rate Maps (FIRM).

- II. The title of Chapter 21.28 (Overlay Coastal Zoning Districts (MHP, PM, B, C and H) shall be amended to read as follows:

Section:

- 21.28.010 Purposes of Overlay Coastal Zoning Districts.**
- 21.28.020 Mobile Home Park (MHP) Overlay Coastal Zoning District.**
- 21.28.030 Parking Management (PM) Overlay District.**
- 21.28.040 Bluff (B) Overlay District.**
- 21.28.050 Canyon (C) Overlay District.**
- 21.28.060 Height (H) Overlay District.**
- 21.28.070 Special Flood Hazard Area (VE) Overlay District.**

- III. Section 21.28.070 (Special Flood Hazard Area (VE) Overlay District) of the NBMC shall be added to read as follows:

Section 21.28.070 Special Flood Hazard Area (VE) Overlay District.

A. Applicability. This section applies to encroachments for residential properties located in the coastal high hazard area as defined in Chapter 15.50 (Floodplain Management) and identified as VE 13 or VE 15 on the adopted FEMA FIS and FIRM pursuant to Section 15.50.070 (Basis for Establishing the Areas of Special Flood Hazard). For purposes of this section, "encroachments" are limited to decks, landings, patios, platforms, porches, steps, raised walkways, or terraces required for access. With the exception of the encroachments authorized herein, all development shall comply with the applicable residential development standards (e.g., floor area limit, setbacks, parking) of the underlying zoning district set forth in the NBMC. In situations where an inconsistency occurs between the development standards of the underlying zoning district and the standards in this section related to encroachments, the standards related to encroachments in this section shall apply.

The encroachments allowed by this section shall only apply to new construction, substantial damage, or substantial improvements to the structure pursuant to

Section 15.50.200 (Coastal High Hazard Areas) for residential properties where the structure is required to raise the foundation above the design flood elevation.

B. Allowed Encroachments in Side and Rear Setbacks. An encroachment may be located within a required side or rear setback area other than those abutting an alley subject to the following restrictions:

1. The design of the encroachment shall comply with the building standards set forth in Section 15.05.100 (Amendment to Section R301.2.4) and either of the following:
 - a. Chapter 15.50 (Flood Plain Management); or
 - b. The Flood Resistant Design and Construction publication by the American Society of Civil Engineers (ASCE 24).
2. For interior lots, the encroachment may be located in one (1) or more side or rear setback and may extend to the property line abutting the side or rear setback.
3. For corner lots, the encroachment may be located in the interior side or rear setback. Encroachments in a side or rear setback facing a street may only be permitted to the minimum extent necessary to provide access to the dwelling. The encroachment shall comply with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).
4. Excluding required guardrails or handrails, the finished surface of the encroachment shall not exceed six (6) inches above the finished floor of the dwelling unit(s).
5. Guardrails and handrails in the side and rear setback shall be constructed of either transparent material (except for supports) or opaque material (e.g. decorative grillwork, wrought iron, latticework, or similar materials) so that at least forty percent (40%) of the guardrail or handrail is open. Handrails and guardrails shall not exceed the minimum height requirements set forth in the California Building Code for safety purposes.

C. Allowed Encroachments in Front Setbacks.

1. The design of the encroachment shall comply with the building standards set forth in Section 15.05.100 (Amendment to Section R301.2.4) and either of the following:
 - a. Chapter 15.50 (Flood Plain Management); or

- b. The Flood Resistant Design and Construction publication by the American Society of Civil Engineers (ASCE 24).
 2. For interior lots, excluding the required guardrails or handrails, the finished surface of the encroachment shall not exceed six (6) inches above the finished floor of the dwelling unit(s).
 3. For corner lots, excluding the required guardrails or handrails, the finished surface of the encroachment shall not exceed six (6) inches above the finished floor of the dwelling unit(s) and may extend to the property line abutting the front setback adjacent to the beach or permitted Ocean Front Encroachment areas (Appendix C Ocean Front Encroachment Policy Guidelines of Title 21). Encroachments in a front setback abutting the Ocean Front Boardwalk may be permitted subject to compliance with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).
 - a. Corner lots shall be developed in a manner that ensures visibility across the corners of the intersecting streets, alleys, sidewalks, private driveways, and the Ocean Front Boardwalk. Notwithstanding the requirements of this subsection (C), no encroachment over thirty (30) inches in height from existing grade shall be located within the traffic visibility triangle (i.e. the triangular-shaped area on a corner lot formed by measuring the five (5) feet from the intersection of the front and street side property lines adjacent to the Ocean Front Boardwalk).
 - b. Improvements or structures that exceed the allowable height limit for visibility in the traffic safety visibility area may be approved by the City Traffic Engineer if he/she determines that the location and/or height of the existing or proposed improvement or structure allows for the unobstructed view of oncoming traffic including bicyclists, and pedestrians by a driver, bicyclist, or pedestrian approaching an intersection.
 4. Guardrails and handrails in the front setback shall be constructed of either transparent material (except for supports) or opaque material (e.g. decorative grillwork, wrought iron, latticework, or similar materials) so that at least forty percent (40%) of the guardrail or handrail is open. Handrails and guardrails shall not exceed the minimum height requirements set forth in the California Building Code for safety purposes.
- IV. Subsection (f) shall be added to Section 21.30.110(D)(1) (General Regulations) of the NBMC to read as follows:

f. Special Flood Hazard Area (VE) Overlay. Encroachments allowed by this subsection shall apply to properties within the VE Overlay except as modified by Section 21.28.070 (VE Overlay). See Section 21.28.070 (VE Overlay) for setback regulations and additional authorized encroachments.

EXHIBIT "B"

FACTS IN SUPPORT OF LOCAL COASTAL PROGRAM AMENDMENT (PA2018-075)

An amendment to Title 21 (Planning and Zoning) of the NBMC is a legislative act. There are no required findings for either approval or denial of such amendments.

Notwithstanding the foregoing, the Local Coastal Program Amendment is consistent with the City Council's initiation and allows for orderly residential development while protecting property rights, as identified below.

1. The Local Coastal Program Amendment is consistent with Coastal Land Use Plan Policy 2.7-1 and General Plan Land Use Element Policy LU 5.1.6, which require development to maintain appropriate setbacks for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources. The proposed amendments would only apply to private residential single-unit and two-unit properties and do not authorize any changes to public property.
2. The Local Coastal Program Amendment does not authorize any new development that will block coastal access, nor does it change the dimensions of setbacks. Instead, it will provide flexibility in the application of height requirements for accessory structures within front, side, and rear setbacks. No changes to density or to maximum height limits of principal structures are proposed as part of this amendment. All new residential development in the VE Zone will require approval of a coastal development permit to evaluate compliance with the Coastal Act, including potential impacts to views and access related to the proposed design and location.
3. Typical residential properties along the beach and boardwalk can achieve seamless indoor and outdoor living with front patios along the sand or boardwalk. As of the effective date of the new FIRMs, properties in the VE Zone are no longer able to achieve this design, as their finished floors are elevated well above the beach or boardwalk. The existing residential development standards in the NBMC limit accessory structures to 42 inches maximum within the front setback. However, in the VE Zone, no patios or decks attached to the principal structure can be located below the first-floor elevation. This significantly limits outdoor living space for the affected properties. Furthermore, no direct access to the ground is provided, as the required stairs and handrails or guardrails exceed height limits in the front setback. The Local Coastal Program Amendment is therefore necessary to provide parity between residential properties located in the VE Zone and typical residential properties throughout Coastal Zone. The changes will allow for raised landings, decks, patios, platforms, stairs, railings, handrails and terraces to exceed the maximum height limits for accessory structures within front, side, and rear yard setbacks for new residential construction within the VE Zone.

4. New residential construction and substantial improvements in the VE Zone are required to be elevated approximately three to five feet above existing grade and stairs are necessary to access the dwelling from the ground. Currently, the NBMC limits steps, landings, platforms, and similar features to 18 inches from existing grade in the side and rear setback. An 18-inch-high platform is not sufficient to reach the first floor of the new structure. The Zoning Code Amendment and Local Coastal Program Amendment would allow new residential construction to provide direct access to the dwelling from the side or rear setback without the need to reduce the floor area of the dwelling to accommodate the stairs. The required handrails or guardrails would also be allowed as part of the amendment to accommodate access in the side and rear setback areas.
5. With exception of the changes to allowable setback encroachments, all future development within the VE Zone would remain consistent with unchanged applicable standards of the R-1 and R-2 Zoning Districts. These include setbacks, height, floor area limitations, and parking standards.

Attachment C

Planning Commission Resolution No. PC2023-022

RESOLUTION NO. PC2023-022

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING CITY COUNCIL ADOPT AN AMENDMENT TO TITLE 20 (PLANNING AND ZONING) AND TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) TO ESTABLISH THE SPECIAL FLOOD HAZARD (VE) OVERLAY DISTRICT AND MODIFY DEVELOPMENT STANDARDS FOR NEW RESIDENTIAL STRUCTURES LOCATED WITHIN THE SPECIAL FLOOD HAZARD AREA (PA2018-075)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. On March 21, 2019, new Federal Emergency Management Agency (“FEMA”) Flood Insurance Rate Maps (“FIRMS”) went into effect for Newport Beach. The maps included the new designation of a Special Flood Hazard Area (“VE Zone”) affecting 166 beachfront properties in the West Newport area between 24th Street and 48th Street.
2. New development within the VE Zone is required to meet FEMA construction design criteria. These criteria include elevating structures with pilings, posts, piers, or columns to raise the main residential structure approximately three to five feet from existing grade. In the event of a wave attack, these structures are designed and engineered to allow water to flow below the elevated floor system without damaging the foundation or creating substantial debris.
3. Of the 166 affected properties, 27 properties are within the VE 13 Zone and require elevating structures approximately three feet above existing grade. The remaining 139 properties are within the VE 15 Zone and require elevating structures approximately five feet from existing grade. Compliance with the new VE Zone design criteria presents several challenges for new residential development to also meet the requirements of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (“NBMC”). Specifically, compliance with the VE Zone design criteria significantly limits means of access to the dwelling, as well as the usability of outdoor areas.
4. On March 26, 2019, the City Council of the City of Newport Beach (“City”) adopted Resolution No. 2019-31 initiating an amendment to Title 20 (“Zoning Code Amendment”) and Title 21 (“Local Coastal Program Amendment”) of the NBMC to modify the setback encroachment regulations for residential properties in the VE Flood Hazard Area. Specifically, the Zoning Code Amendment and Local Coastal Program Amendment are intended to resolve conflicts in the NBMC related to height allowances in setbacks that limit or eliminate access and usability of front, side, and rear yard setbacks.

5. Resolution No. 2019-31 included the initiation of other changes to Titles 20 and 21 of the NBMC, such as parking adjustments and changes in the methodology for measuring height of a principal structure for affected properties. However, after further analysis and consideration, these potential changes were deemed unnecessary and are not included in the Zoning Code Amendment and Local Coastal Program Amendment.
6. Since adoption of the new FIRMs, the City has received three variance requests for new residential projects in the VE Zone. Each of the three requests is only for relief from the setback standards in Titles 20 and 21 of the NBMC that directly conflict with the ability to comply with FEMA's VE Zone design criteria. Approval and implementation of the Zoning Code Amendment and Local Coastal Program Amendment would provide for easier compliance and is likely to result in fewer variance requests in the VE Zone.
7. The affected properties are categorized as RS-D (Single Unit Residential Detached) and RT (Two Unit Residential) by the General Plan Land Use Element and are located within the R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential) Zoning District. The subject properties are also located within the Coastal Zone. They are categorized as RSD-D (Single Unit Residential Detached – 20.0-29.9 DU/AC) and RT-E (Two Unit Residential – 30.0 – 39.9 DU/AC) in the Coastal Land Use Plan and are located within the R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential) Coastal Zoning Districts.
8. A draft of this Local Coastal Program Amendment was presented to the design community on December 2, 2021, and to affected and nearby property owners on January 19, 2022, via virtual community meetings. Staff has incorporated their comments into the proposed amendments to the extent feasible.
9. Section 30500 of the California Public Resources Code requires each county and city to prepare a Local Coastal Program ("LCP") for that portion of the coastal zone within its jurisdiction.
10. In 2005, the City adopted the City of Newport Beach LCP Coastal Land Use Plan, as amended from time to time.
11. The California Coastal Commission effectively certified the City's LCP Implementation Plan on January 13, 2017, and the City added Title 21 to the NBMC whereby the City assumed coastal development permit-issuing authority on January 30, 2017.
12. Pursuant to Section 13515 (Public Participation and Agency Coordination Procedures) of the California Code of Regulations Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 5 (Public Participation) ("Section 13515"), a draft of the LCP Amendment was made available and a Notice of Availability was distributed at least six weeks prior to the anticipated final action date.

13. A public hearing was held on May 4, 2023, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 et seq. (“Ralph M. Brown Act”), Chapters 20.62 and 21.62 (Public Hearings) of the NBMC, and Section 13515. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The Zoning Code Amendment and Local Coastal Program Amendment are not subject to the California Environmental Quality Act (“CEQA”) under Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in a physical change to the environment, directly or indirectly.
2. The Zoning Code Amendment and Local Coastal Program Amendment would also be considered exempt from CEQA pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.
3. The Class 5 exemption allows minor alterations in land use limitations in areas with an average slope of less than 20 percent (20%), which do not result in any changes in land use or density. The Zoning Code Amendment and Local Coastal Program Amendment seek to provide flexibility for potential encroachments into side, rear, and front setback areas for properties located within the VE Zone. The proposed changes to the NBMC could result in raised decks, landings, stairs, and other accessory features in the front, side, and rear setbacks for the affected properties. All changes are limited in scope and would only alter regulations for the height of accessory structures, which would not result in any changes to land use intensity or density.
4. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The affected location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

1. Amendments to the NBMC are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
2. The Zoning Code Amendment and Local Coastal Program Amendment are consistent with the Coastal Land Use Plan, including Policy 2.7-1, which requires

development to “maintain appropriate setbacks and density, floor area, and height limits for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources”. The proposed amendments would only apply to private residential single-unit and two-unit properties and does not authorize any changes to public property. The Zoning Code Amendment and Local Coastal Program Amendment do not authorize any new development that will block coastal access, nor do they change the dimensions of setbacks. Instead, it will provide flexibility in the application of height requirements for accessory structures within front, side, and rear setbacks. No changes to density or to maximum height limits of principal structures are proposed as part of this amendment. All new residential development in the VE Zone will require approval of a coastal development permit to evaluate compliance with the Coastal Act, including potential impacts to views and access related to the proposed design and location.

3. The Zoning Code Amendment and Local Coastal Program Amendment are necessary to provide parity between residential properties located in the VE Zone and typical residential properties throughout Coastal Zone. The changes will allow for raised landings, decks, patios, platforms, stairs, railings, handrails, and similar features to exceed the maximum height limits for accessory structures within front, side, and rear yard setbacks for new residential construction within the VE Zone. Typical residential properties along the beach and boardwalk can achieve seamless indoor and outdoor living with front patios along the sand or boardwalk. As of the effective date of the new FIRMs, properties in the VE Zone are no longer able to achieve this design, as their finished floors are elevated well above the beach or boardwalk. The existing residential development standards in the NBMC limit accessory structures to 42 inches maximum within the front setback. However, in the VE Zone, no patios or decks attached to the principal structure can be located below the first-floor elevation. This significantly limits outdoor living space for the affected properties. Furthermore, no direct access to the ground is provided, as the required stairs and handrails or guardrails exceed height limits in the front setback.
4. New residential construction and substantial improvements in the VE Zone are required to be elevated approximately 3 to 5 feet above existing grade and stairs are necessary to access the dwelling from the ground. Currently, the NBMC limits steps, landings, platforms, and similar features to 18 inches from existing grade in the side and rear setback. An 18-inch-high platform is not sufficient to reach the first floor of the new structure. The Zoning Code Amendment and Local Coastal Program Amendment would allow new residential construction to provide direct access to the dwelling from the side or rear setback without the need to reduce the floor area of the dwelling to accommodate the stairs. The required handrails or guardrails would also be allowed as part of the amendment to accommodate access in the side and rear setback areas.
5. With exception of the allowable setback encroachments, all future development within the VE Zone would remain consistent with unchanged applicable standards of the R-1 and R-2 Coastal Zoning Districts. These include setbacks, height, floor area limitations, and parking standards.

6. The recitals provided in this Resolution are true and correct and are incorporated into the operative part of this Resolution.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds this action is not subject to the California Environmental Quality Act (CEQA) under Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in a physical change to the environment, directly or indirectly.
2. The Planning Commission also finds that this Zoning Code Amendment and Local Coastal Program Amendment are categorically exempt from the California Environmental Quality Act under Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The affected location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.
3. The Planning Commission hereby recommends City Council approve an amendment to Title 20 (Planning and Zoning) of the NBMC attached hereto as “Exhibit A” and incorporated herein by reference.
4. The Planning Commission further recommends that the City Council authorize the submittal of an amendment to Title 21 (Local Coastal Program Implementation Plan) of the NBMC, attached hereto as Exhibit “B” and incorporated herein by reference, to the California Coastal Commission for its review and certification.

PASSED, APPROVED, AND ADOPTED THIS 4th DAY OF MAY, 2023.

AYES: Barto, Ellmore, Harris, Klaustermeier, Langford, Lowrey, and Rosene

NOES: None

ABSTAIN: None

ABSENT: None

BY: 
Curtis Ellmore, Chair

BY: 
Sarah Klaustermeier, Secretary

Attachment(s): Exhibit A – Zoning Code Amendment No. PA2018-075
 Exhibit B – Local Coastal Program Amendment No. PA2018-075

EXHIBIT “A”

ZONING CODE AMENDMENT NO. PA2018-075

I. Section 20.28.010 (Purposes of Overlay Zoning Districts) of the NBMC shall be amended to read as follows:

E. Special Flood Hazard Area (VE) Overlay Zoning District. The VE Overlay District is intended to modify certain development standards for properties subject to special flood hazards as identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Orange County, California and Incorporated Area with accompanying FEMA Flood Insurance Rate Maps (FIRM).

II. Section 20.28.070 (SPECIAL FLOOD HAZARD AREA (VE) OVERLAY DISTRICT) of the NBMC shall be added to read as follows:

Section 20.28.070 Special Flood Hazard Area (VE) Overlay District.

A. Applicability. This section applies to encroachments for residential properties located in the coastal high hazard area as defined in Chapter 15.50 (Floodplain Management) and identified as VE 13 or VE 15 on the adopted FEMA FIS and FIRMs pursuant to NBMC Section 15.50.070 (Basis for Establishing the Areas of Special Flood Hazard). For purposes of this section, “encroachments” includes, and is limited to, decks, landings, patios, platforms, porches, steps, raised walkways, terraces, or similar structures for access. With the exception of the encroachments authorized herein, all development shall comply with the applicable residential development standards (e.g., floor area limit, setbacks, parking) of the underlying zoning district set forth in the NBMC, except as modified by this section. In situations where an inconsistency occurs between the development standards related to encroachments of the underlying zoning district and the standards in this section, the standards in this section shall apply.

The encroachments allowed by this section shall only apply to new construction, substantial damage, or substantial improvements pursuant to Section 15.50.200 (Coastal High Hazard Areas) for residential properties where the structure is required to raise the foundation above the design flood elevation.

B. Allowed Encroachments in Side and Rear Setbacks. An encroachment may be located within a required side or rear setback area other than those abutting an alley subject to the following restrictions:

1. The design of the encroachment shall comply with the building standards set forth in 15.05.100 (Amendment to Section R301.2.4) including the provisions of either:
 - a. NBMC Chapter 15.50 (Flood Plain Management); or
 - b. American Society of Civil Engineers (ASCE) 24.

2. The design shall comply with Section 20.30.110(A)(1)(c) (Access to Side Setback Area).
 3. For interior lots, the encroachment may be located in one or more side or rear setbacks. There shall be no limit in the length, width, or depth of the encroachment in an interior side or rear setback.
 4. For corner lots, the encroachment may be located in the interior side or rear setback. There shall be no limit in length, width, or depth of the walkway, deck, platform, or similar structure within the interior side or interior rear setback. Encroachments in a side setback facing a street may only be permitted to the minimum extent necessary to provide access to the dwelling. The encroachment shall comply with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).
 5. Excluding required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the principal structure.
 6. Guardrails and handrails in the side and rear setback areas shall consist of open grillwork, wrought iron, latticework, pickets, plexiglass, or similar materials so that at least 40 percent (40%) of the fence or wall is open. Handrails and guardrails shall not exceed the minimum height required by the CBC for safety purposes.
- C. Allowed Encroachments in Front Setbacks. Encroachments may be located within a required front setback area subject to the following restrictions:
1. The design of the encroachment shall comply with the building standards set forth in 15.05.100 (Amendment to Section R301.2.4) including the provisions of either:
 - a. NBMC Chapter 15.50 (Flood Plain Management); or
 - b. American Society of Civil Engineers (ASCE) 24.
 2. For interior lots, excluding the required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the principal structure. There shall be no limit in the length, width, or depth of the encroachment in a front setback of an interior lot.
 3. For corner lots, excluding the required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the structure. There shall be no limit in the length, width, or depth of the encroachment in a front setback adjacent to the beach or permitted Ocean Front Encroachment areas (Appendix C Ocean Front Encroachment Policy Guidelines of Title 21). Encroachments in a front setback abutting the Ocean

Front Boardwalk may be permitted subject to compliance with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).

- a. Corner lots shall be developed in a manner that ensures visibility across the corners of the intersecting streets, alleys, sidewalks, private driveways, and the Ocean Front Boardwalk. Notwithstanding the requirements of this subsection (C), no encroachment over thirty (30) inches in height from existing grade shall be located within the traffic visibility triangle (i.e. the triangular-shaped area on a corner lot formed by measuring the 5 feet from the intersection of the front and street side property lines adjacent to the Ocean Front Boardwalk).
- b. City Traffic Engineer Approval. Improvements, structures, or vegetation that exceed the allowed height limit for visibility in the traffic safety visibility area may be approved by the City Traffic Engineer if it is determined that the location and/or height of the existing or proposed hedge, shrubbery, structure, or other obstruction allows for the unobstructed view of oncoming traffic, bicyclists, and pedestrians from a driver, bicyclists, or pedestrians approaching an intersection.

D. Guardrails and handrails in the side and rear setback shall consist of open grillwork, wrought iron, latticework, pickets, plexiglass, or similar materials so that at least 40 percent (40%) of the fence or wall is open. Handrails and guardrails shall not exceed the minimum height required by the CBC for safety purposes.

E. Third Floor Limitations. All residential structures shall comply with Section 20.48.180 (Residential Development Standards and Design Criteria). For purposes of determining the number of floors within the principal structure, the garage shall be considered the first-floor level. In the case of a split-level design, the Director shall determine which portions of the split-level structure shall constitute a third floor for the purpose of implementing Section 20.48.180 (Residential Development Standards and Design Criteria).

III. Subsection (f) shall be added to Section 20.30.110(D)(1) (General Regulations) of the NBMC to read as follows:

f. Special Flood Hazard Area (VE) Overlay. Encroachments allowed by this subsection shall apply to properties within the VE Overlay except as modified by Section 20.28.070 (VE Overlay). See Section 20.28.070 (VE Overlay) for setback regulations and additional authorized encroachments.

Exhibit “B”

LOCAL COASTAL PROGRAM AMENDMENT NO. PA2018-075

I. Section 21.28.010 (Purposes of Overlay Zoning Districts) of the NBMC shall be amended to read as follows:

F. Special Flood Hazard Area (VE) Overlay Zoning District. The VE Overlay District is intended to modify certain development standards for properties subject to special flood hazards as identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Orange County, California and Incorporated Area with accompanying FEMA Flood Insurance Rate Maps (FIRM).

II. Section 21.28.070 (SPECIAL FLOOD HAZARD AREA (VE) OVERLAY DISTRICT) of the NBMC shall be added to read as follows:

Section 21.28.070 Special Flood Hazard Area (VE) Overlay District

A. Applicability. This section applies to encroachments for residential properties located in the coastal high hazard area as defined in Chapter 15.50 (Floodplain Management) and identified as VE 13 or VE 15 on the adopted FEMA FIS and FIRMs pursuant to NBMC Section 15.50.070 (Basis for Establishing the Areas of Special Flood Hazard). For purposes of this section, “encroachments” includes, and is limited to, decks, landings, patios, platforms, porches, steps, raised walkways, terraces, or similar structures for access. With the exception of the encroachments authorized herein, all development shall comply with the applicable residential development standards (e.g., floor area limit, setbacks, parking) of the underlying zoning district set forth in the NBMC, except as modified by this section. In situations where an inconsistency occurs between the development standards related to encroachments of the underlying zoning district and the standards in this section, the standards in this section shall apply.

The encroachments allowed by this section shall only apply to new construction, substantial damage, or substantial improvements pursuant to Section 15.50.200 (Coastal High Hazard Areas) for residential properties where the structure is required to raise the foundation above the design flood elevation.

B. Allowed Encroachments in Side and Rear Setbacks.

1. The design of the encroachment shall comply with the building standards set forth in 15.05.100 (Amendment to Section R301.2.4) including the provisions of either:
 - a. NBMC Chapter 15.50 (Flood Plain Management); or
 - b. American Society of Civil Engineers (ASCE) 24.

2. Design shall comply with NBMC Section 21.30.110 (A)(1)(c) (Access to Side Setback Area).
3. For interior lots, the encroachment may be located in one or more side or rear setbacks. There shall be no limit in the length, width, or depth of the encroachment in an interior side or rear setback.
4. For corner lots, the encroachment may be located in the interior side or rear setback. There shall be no limit in length, width, or depth of the walkway, deck, platform, or similar structure within the interior side or interior rear setback. Encroachments in a side setback facing a street may only be permitted to the minimum extent necessary to provide access to the dwelling. The encroachment shall comply with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).
5. Excluding required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the principal structure.
6. Guardrails and handrails in the side and rear setback areas shall consist of open grillwork, wrought iron, latticework, pickets, plexiglass, or similar materials so that at least 40 percent (40%) of the fence or wall is open. Handrails and guardrails shall not exceed the minimum height required by the CBC for safety purposes.

C. Allowed Encroachments in Front Setbacks.

1. The design of the encroachment shall comply with the building standards set forth in 15.05.100 (Amendment to Section R301.2.4) including the provisions of either:
 - a. NBMC Chapter 15.50 (Flood Plain Management); or
 - b. American Society of Civil Engineers (ASCE) 24.
2. For interior lots, excluding the required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the principal structure. There shall be no limit in the length, width, or depth of the encroachment in a front setback of an interior lot.
3. For corner lots, excluding the required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the structure. There shall be no limit in the length, width, or depth of the encroachment in a front setback adjacent to the beach or permitted Ocean Front Encroachment areas (Appendix C Ocean Front Encroachment Policy Guidelines of Title 21). Encroachments in a front setback abutting the Ocean Front Boardwalk may be permitted subject to compliance with all other

development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).

- a. Corner lots shall be developed in a manner that ensures visibility across the corners of the intersecting streets, alleys, sidewalks, private driveways, and the Ocean Front Boardwalk. Notwithstanding the requirements of this subsection (C), no encroachment over 30 inches in height from existing grade shall be located within the traffic visibility triangle (i.e. the triangular-shaped area on a corner lot formed by measuring the 5 feet from the intersection of the front and street side property lines adjacent to the Ocean Front Boardwalk).
- b. City Traffic Engineer Approval. Improvements, structures, or vegetation that exceed the allowed height limit for visibility in the traffic safety visibility area may be approved by the City Traffic Engineer if it is determined that the location and/or height of the existing or proposed hedge, shrubbery, structure, or other obstruction allows for the unobstructed view of oncoming traffic, bicyclists, and pedestrians from a driver, bicyclists, or pedestrians approaching an intersection.

D. Guardrails and handrails in the side and rear setback shall consist of open grillwork, wrought iron, latticework, pickets, plexiglass, or similar materials so that at least 40 percent (40%) of the fence or wall is open. Handrails and guardrails shall not exceed the minimum height required by the CBC for safety purposes.

III. Subsection (f) shall be added to Section 21.30.110(D)(1) (General Regulations) of the NBMC to read as follows:

f. Special Flood Hazard Area (VE) Overlay. Encroachments allowed by this subsection shall apply to properties within the VE Overlay except as modified by Section 21.28.070 (VE Overlay). See Section 21.28.070 (VE Overlay) for setback regulations and additional authorized encroachments.

Attachment D

May 4, 2023 Planning Commission Meeting Minutes

**NEWPORT BEACH PLANNING COMMISSION MINUTES
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, MAY 4, 2023
REGULAR MEETING – 6:30 P.M.**

I. **CALL TO ORDER** – 6: 30 P.M.

II. **PLEDGE OF ALLEGIANCE** – Commissioner Harris

III. **ROLL CALL**

PRESENT: Chair Curtis Ellmore, Vice Chair Mark Rosene, Secretary Sarah Klaustermeier, Commissioner Brady Barto, Commissioner Tristan Harris, Commissioner Jonathan Langford, and Commissioner Lee Lowrey

ABSENT: None

Staff Present: Community Development Director Simone Jurjis, Deputy Community Development Director Jim Campbell, Assistant City Attorney Yolanda Summerhill, City Traffic Engineer Brad Sommers, Senior Planner Liz Westmoreland, and Administrative Assistant Clarivel Rodriguez

IV. **PUBLIC COMMENTS**

None

V. **REQUEST FOR CONTINUANCES**

Deputy Community Development Director Campbell announced that staff is requesting a continuance for Item No. 4 until May 18, 2023.

VI. **CONSENT ITEMS**

ITEM NO. 1 MINUTES OF APRIL 20, 2023

Recommended Action: Approve and file

Motion made by Commissioner Harris and seconded by Vice Chair Rosene to approve the minutes of the April 20, 2023, meeting with Mr. Mosher's edits.

AYES: Barto, Harris, Klaustermeier, Langford, Lowrey, and Rosene

NOES: None

ABSTAIN: Ellmore

ABSENT: None

VII. **PUBLIC HEARING ITEMS**

ITEM NO. 2 PARK NEWPORT LANDSLIDE AND ROCKFALL MITIGATION PROJECT (PA2023-0034)
Site Location: The bluff and residential areas near 5000 Park Newport Drive and Back Bay Drive at the bottom of the slope

Summary:

A request for a coastal development permit to allow the installation of anchored mesh, temporary tarps, and k-rails to help mitigate the potential for rockfall from the sloped area adjacent to the Park Newport community onto Back Bay Drive. The project also includes the installation of soldier piles within the Park Newport site near two existing residential buildings to further mitigate against landslide risk. As the k-rails are located in the public right-of-way, the applicant is requesting a waiver of Council Policy L-6 and an encroachment permit to retain the existing non-compliant improvements, consisting of three sections of

temporary k-rail that encroach up to 12 feet, 8 inches into the 40-foot-wide public right-of-way at the property.

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15269(c) (the activity is necessary to prevent or mitigate an emergency), Section 15301 under Class 1 (Existing Facilities), and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment;
3. Waive City Council Policy L-6, Encroachments in the Public Rights-of-Way, to retain existing non-compliant private improvements within the Back Bay Drive public right-of-way consisting of three sections of temporary k-rail that encroach in excess of 1-foot into the 40-foot wide Back Bay Drive public right-of-way or taller than 36-inches in height; and
4. Adopt Resolution No. PC2023-021 approving the Coastal Development Permit filed as PA2023-0034.

Senior Planner Westmoreland used a presentation to review the proposed project location, images of the bluff from 2019 and 2020, background, Coastal Development Permit (CDP) history, project description, anchored mesh images, K-rail barriers locations, seasonal tarping images, locations of soldier piles (micropiles), response to prior comments, photo of existing improvement areas, key findings and discussion, and recommended action.

The Commissioners reported receiving no ex parte communications.

Chair Ellmore opened the public hearing.

Shawna Schaffner, applicant representative, used a presentation to review the property location, project site history, bluff stability, project goals, Planning Commission approval on April 21, 2022, Coastal Commission appeal, process following the appeal, June 2020 landslide and images, proposed project and improvements, steel mesh and straw wattle timeline and images, k-rail placement and image, residential structure protection and image, seasonal tarping details and images, conclusion summary, and requested action.

The applicant agreed to the recommended conditions of approval.

In response to Secretary Klaustermeier's question, Ms. Schaffner indicated that the tarping is meant to reduce the erosion and micropile walls increase safety factors for residential structures but do not shore up the bluff, noted the successful results from tarping, and expressed no awareness of any area becoming red tagged on the site.

Jim Mosher questioned the management of tarping to not further damage vegetating areas trying to recover and the viability of hydroseeding.

Chair Ellmore closed the public hearing.

Motion made by Vice Chair Rosene and seconded by Commissioner Barto to approve the item as recommended by staff.

AYES: Barto, Ellmore, Harris, Klaustermeier, Langford, Lowrey, and Rosene
NOES: None
ABSTAIN: None
ABSENT: None

ITEM NO. 3 SPECIAL FLOOD HAZARD (VE) OVERLAY CODE AMENDMENTS (PA2018-075)

Site Locations: West Ocean Front properties, generally located between 24th Street and 48th Street

Summary:

The City is proposing amendments to the Newport Beach Municipal Code (NBMC) Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) to establish a new Special Flood Hazard (VE) Overlay District for properties along West Ocean Front, generally located between 24th Street and 48th Street, and designated by the Federal Emergency Management Agency (FEMA) as being in the VE Special Flood Hazard Area (VE Zone). The proposed overlay would modify development standards for new residential projects allowing raised walkways, decks, and stairs with necessary guardrails to encroach into the front, side, and rear setback areas to provide reasonable use and site access. The raised decks and walkways would be elevated similarly to the required elevated finished floor of the new home.

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) in accordance with Section 21065 of CEQA and State CEQA Guidelines Sections 15060(C)(2), 15060(c)(3), and 15378. The action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment. The Amendments themselves do not authorize development that would directly result in physical change to the environment. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program, because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2023-022 recommending the City Council approve PA2018-075, including the Zoning Code Amendment and the Local Coastal Program Amendment, and authorize staff to submit the amendment to the California Coastal Commission.

Senior Planner Westmoreland used a presentation to provide an overview of the proposed code amendments, FEMA flood maps, VE Zone location, affected west oceanfront properties, unique requirements for the VE Zone, new construction compliant design standards, an example of a home built to the new standards, new construction and site access challenges, reasons for amending the code, proposed amendments, full encroachment locations site plan exhibit and 3-D view, elevation drawing from the side of the property and section view, community outreach, comparison with a beach front home and beach location at the corner, street or alley perspective with and without a gate, summary, and recommended action and next steps.

In response to Commissioner Harris' question, Senior Planner Westmoreland clarified that the side yard with the railings on the top of the stairs is required to be 40 percent open as per the NBMC.

In response to Commission Langford's question, Senior Planner Westmoreland noted that Dana Point adopted a flood hazard zone overlay and stated that they share the same challenges.

In response to Vice Chair Rosene's concern for meeting clearance requirements around the catwalk, Senior Planner Westmoreland explained the property line separation requirements and an alternative for shrinking the building envelope.

In response to Commissioner Barto's questions, Senior Planner Westmoreland indicated that building engineers evaluate walls or fences on a case by case basis to determine if they are acceptable, that certain building materials are required within the designated three-foot area to satisfy fire and building standards, and that breakaway walls are used to provide a level of security.

In response to Commissioner Harris' question, Senior Planner Westmoreland related staff's primary concern for the visible side yards that face the street, a code provision that limits the catwalks to the minimum extent necessary to access the dwelling, and an evaluation of the full encroachment as per Council direction.

In response to Secretary Klaustermeier's question, Senior Planner Westmoreland relayed the building code provision for home renovations and thresholds that trigger bringing the project up to code.

In response to Vice Chair Rosene's question, Senior Planner Westmoreland noted that the setback requirements are only different for corner properties to provide for visibility.

The Commissioners reported receiving no ex parte communications.

Chair Ellmore opened the public hearing.

Jim Mosher suggested replacing "finish" with "finished" on handwritten page 28 in provision number five for consistency, deleting item number six in provision six to eliminate repetitive text and changing the text "Guard rails and handrails have to be at least 40% open" to "...40% is open or constructed of transparent material," and omitting "the" in "by measuring the five feet" found in a paragraph of subsection A on the same page.

Senior Planner Westmoreland thanked Mr. Mosher for his comments and relayed that staff would take them into consideration.

Chair Ellmore closed the public hearing.

Commissioner Harris expressed concern for the amendments and suspected growing pains and appreciated the hard work by staff.

Motion made by Commissioner Harris and seconded by Secretary Klaustermeier to approve the item as recommended by staff.

AYES: Barto, Ellmore, Harris, Klaustermeier, Langford, Lowrey, and Rosene
NOES: None
ABSTAIN: None
ABSENT: None

**ITEM NO. 4 HOUSING ELEMENT IMPLEMENTATION - NOISE-RELATED AMENDMENTS
(PA2022-0201)**

Site Locations: Various sites in the Newport Beach Airport Area bounded by Campus Drive, Jamboree Road, and Route 73, including portions of the Newport Beach Golf Course on Irvine Avenue, the YMCA on University Drive, and several sites in the Santa Ana Heights area.

Summary:

Amendments to Newport Beach General Plan Land Use and Noise Elements, Title 20 (Planning and Zoning) of the Newport Beach Municipal Code (NBMC), Newport Place Planned Community Development Standards (PC-11), and the Newport Airport Village Planned Community Development Plan (PC-60) to allow residential units identified by the certified 2021-2029 6th Cycle Newport Beach General Plan Housing Element to be located within the 65 dBA to 70 dBA CNEL noise contour areas specified by the 2008 John Wayne Airport Environs Land Use Plan, and as illustrated in the attached Noise Contours and Housing Opportunity Sites Map.

Recommended Action:

1. Conduct a public hearing;

2. Find the proposed amendments exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15262 feasibility and planning studies and 15061(b)(3) common sense exemption because they would not result in physical environment impacts; and
3. Adopt Resolution No. PC2023-015 recommending approval of the Airport Area Noise Amendment to the City Council (PA2022-0201).

Motion made by Commissioner Barto and seconded by Chair Ellmore to continue the item to May 18, 2023.

AYES: Barto, Ellmore, Harris, Klaustermeier, Langford, Lowrey, and Rosene
NOES: None
ABSTAIN: None
ABSENT: None

VIII. NEW BUSINESS

ITEM NO. 5 PLANNING COMMISSION MEETINGS CHANGE OF TIME Site Location: Citywide

Summary:

Proposal to modify the Rules of Procedures of the Planning Commission to change the meeting start time from 6:30 p.m. to 6:00 p.m.

Recommended Action:

1. Invite public comment;
2. Find the proposed amendments exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; and
3. Modify the Rules of Procedures for the Planning Commission to change its regular meeting start time to 6:00 p.m.

Chair Ellmore opened the public hearing.

Jim Mosher expressed concern that an earlier meeting time might negatively impact community attendance, recapped the history of Planning Commission meeting start times, and noted the option to start Planning Commission meetings earlier when lengthy agendas are expected.

In response to Chair Ellmore's question, Deputy Community Development Director Campbell noted varied City Council meeting start times of 4 p.m., 5 p.m., and 6 p.m.

Chair Ellmore closed the public hearing.

Motion made by Vice Chair Rosene and seconded by Secretary Klaustermeier to approve the item as recommended by staff and effective immediately.

AYES: Barto, Ellmore, Harris, Klaustermeier, Langford, Lowrey, and Rosene
NOES: None
ABSTAIN: None
ABSENT: None

IX. STAFF AND COMMISSIONER ITEMS

ITEM NO. 6 MOTION FOR RECONSIDERATION

None

ITEM NO. 7 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA

Deputy Community Development Director Campbell announced that the fractional ownership and parking update code amendments will go to the City Council next Tuesday (May 9, 2023), the next Planning Commission meeting scheduled for May 18, 2023, will include two items and the noise-related element of the Housing Element implementation will require the attendance of all Commissioners. He noted that the June 8 meeting will include three items.

Jim Mosher indicated that his previously submitted written comments were not included with tonight's meeting materials and suggested all written comments for Item No. 4 received for tonight's meeting be considered when the item is addressed on May 18th.

ITEM NO. 8 REQUESTS FOR EXCUSED ABSENCES

Secretary Klaustermeier requested an excused absence for the June 8, 2023, Planning Commission meeting.

X. ADJOURNMENT – With no further business, Chair Ellmore adjourned the meeting at 7:26 p.m.

The agenda for the May 4, 2023, Planning Commission meeting was posted on Thursday, April 27, 2023, at 8:20 p.m. in the Chambers binder, on the digital display board located inside the vestibule of the Council Chambers at 100 Civic Center Drive, and on the City's website on Thursday, April 27, 2023, at 8:06 p.m.

Curtis Ellmore, Chair

Sarah Klaustermeier, Secretary

Attachment E

May 4, 2023 Planning Commission Staff Report



CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

May 4, 2023
Agenda Item No. 3

SUBJECT: Special Flood Hazard (VE) Overlay District Amendments (PA2018-075)
▪ Zoning Code Amendment
▪ Local Coastal Program Implementation Plan Amendment

SITE LOCATION: West Ocean Front properties generally located between 24th Street and 48th Street

APPLICANT: City of Newport Beach

OWNER: Various

PLANNER: Liz Westmoreland, Senior Planner
949-644-3234 or lwestmoreland@newportbeachca.gov

PROJECT SUMMARY

The City is proposing amendments to Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) to establish a new Special Flood Hazard (VE) Overlay District. The VE Overlay District would modify standards for new residential development for properties designated by the Federal Emergency Management Agency (FEMA) as being in the VE Special Flood Hazard Area (FEMA VE Zone). New development within the VE Zone is required to meet FEMA construction design criteria, which includes elevating the finished floor of new residential structures approximately 3 to 5 feet above existing grade to avoid flood hazards from potential wave action.

The proposed standards of the VE Overlay District would allow raised walkways, decks, and stairs with necessary guardrails to encroach into the front, side, and rear setback areas to provide reasonable use and site access. The raised decks and walkways would be elevated similarly to the required elevated finished floor of the new home.

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) Find that this action is not a project subject to the California Environmental Quality Act (CEQA) in accordance with Section 21065 of CEQA and State CEQA Guidelines Sections 15060(c)(2), 15060(c)(3) and 15378. The action is also exempt pursuant to State CEQA Guidelines Section 15061(b)(3) because it has no potential to have a significant effect on the environment. The Amendments themselves do not authorize development that would directly result in physical change to the

environment. Lastly, pursuant to CEQA Guidelines Section 15265(a)(1), local governments are exempt from the requirements of CEQA in connection with the adoption of a Local Coastal Program, because it has no potential to have a significant effect on the environment; and

- 3) Adopt Resolution No. PC2023-022 recommending the City Council approve PA2018-075, including the Zoning Code Amendment and the Local Coastal Program Amendment, and authorize staff to submit the amendment to the California Coastal Commission.

INTRODUCTION

Background

Flood Insurance Rate Maps (FIRMs)

On March 21, 2019, new FEMA Flood Insurance Rate Maps (FIRMs) went into effect in the City. The new maps include the designation of a Special Flood Hazard Area (VE Zone) affecting 166 beachfront properties in West Newport, between 24th Street and 48th Street. Figure 1 below is an excerpt of the FIRM with the affected beachfront properties identified by a red oval.

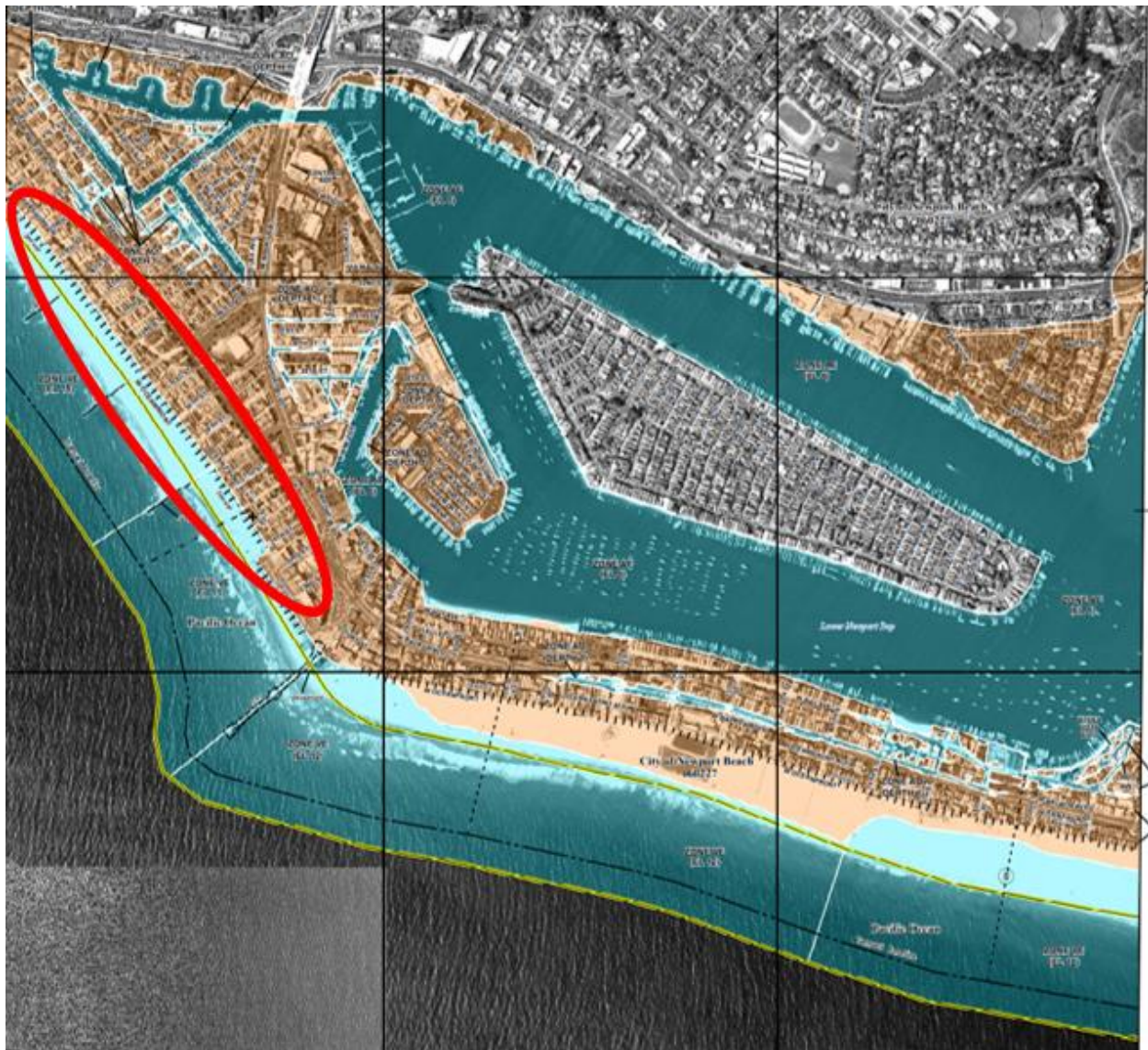


Figure 1 – FIRM for West Ocean Front and Affected Properties.

New development within the VE Zone is required to meet FEMA construction design criteria. This includes using pilings, posts, piers, or columns to raise the main residential structure and maintaining an open foundation free of obstructions for those areas located below the base flood elevation (BFE) (see Figure 2).

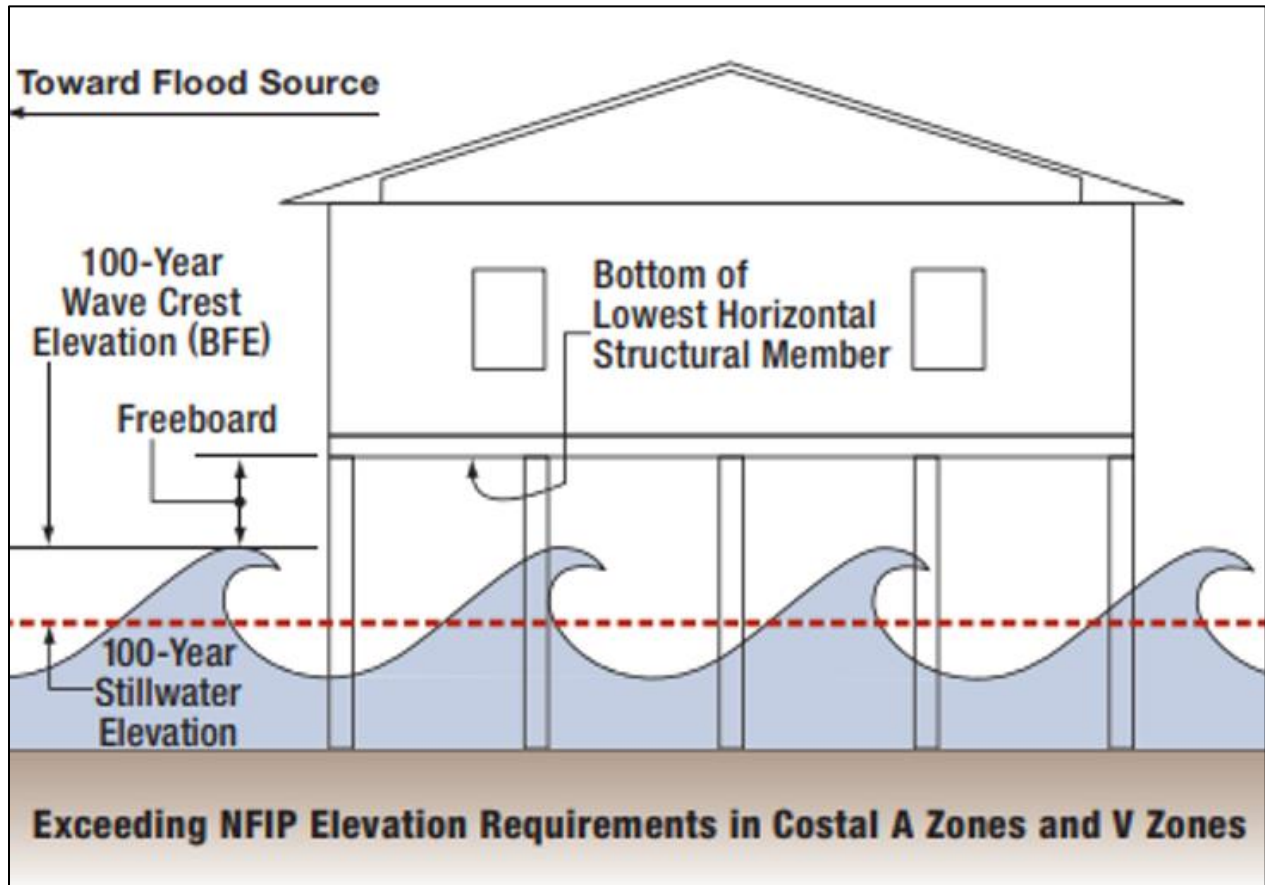


Figure 2 – VE Flood Zone Elevation Requirements

In the event of a wave attack, these structures are designed and engineered to allow water to flow below the elevated floor system without damaging the foundation or creating substantial debris. Of the 166 affected properties, 27 properties are in the “VE 13” area and require structures to be elevated by approximately 3 feet above the existing grade. The remaining 139 properties are in the “VE 15” area and require structures to be elevated approximately 5 feet above the existing grade. Figure 3 below provides a map of affected properties with the VE 13 and VE 15 designations. Figure 4 on the following page provides a photograph of a new residential structure under construction with a raised foundation and Figure 5 provides an exhibit with the raised foundation.

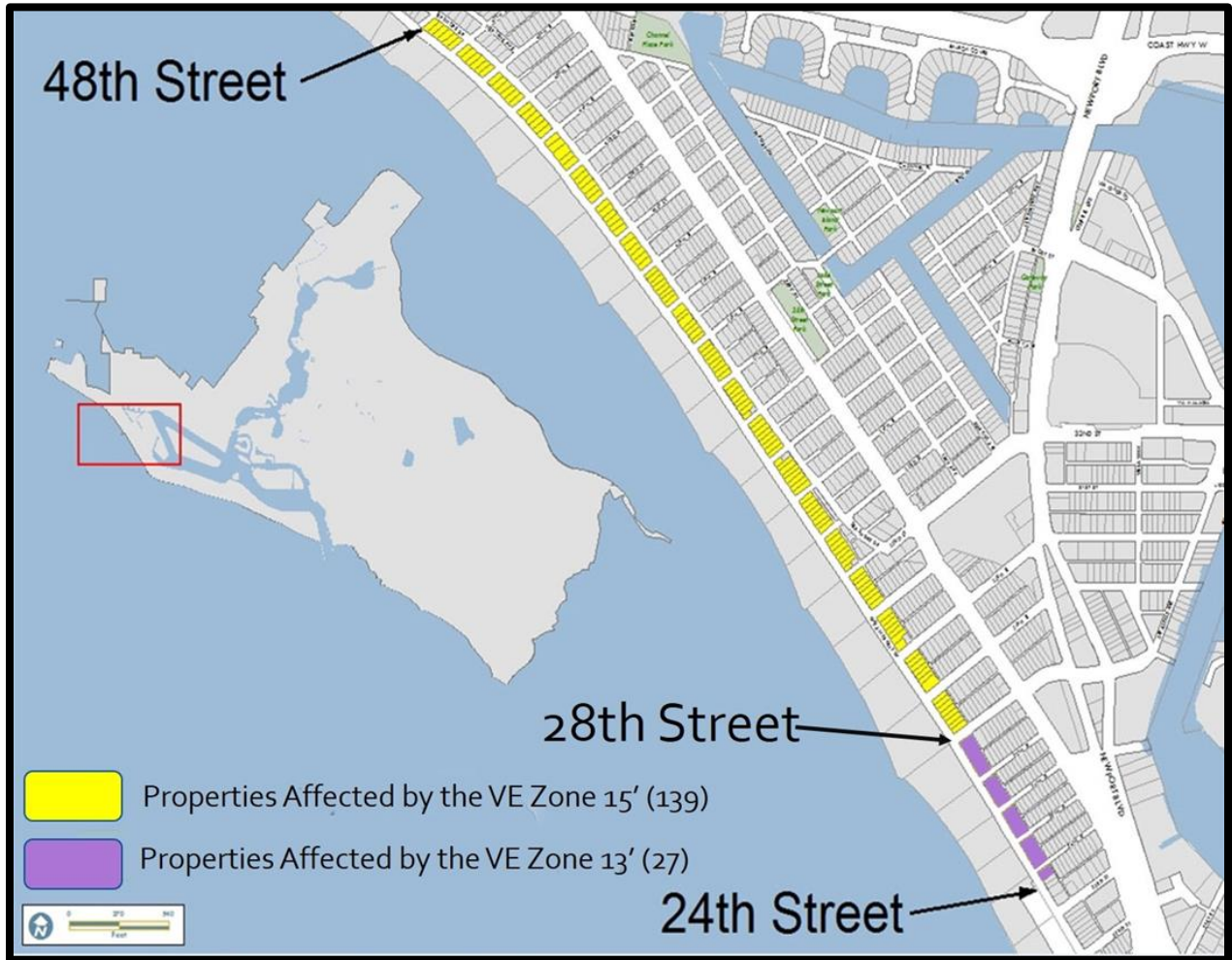


Figure 3 – Map of Affected Properties

(The balance of this page is left intentionally blank.)



Figure 4 – Residence previously under construction at 3807 Seashore Drive

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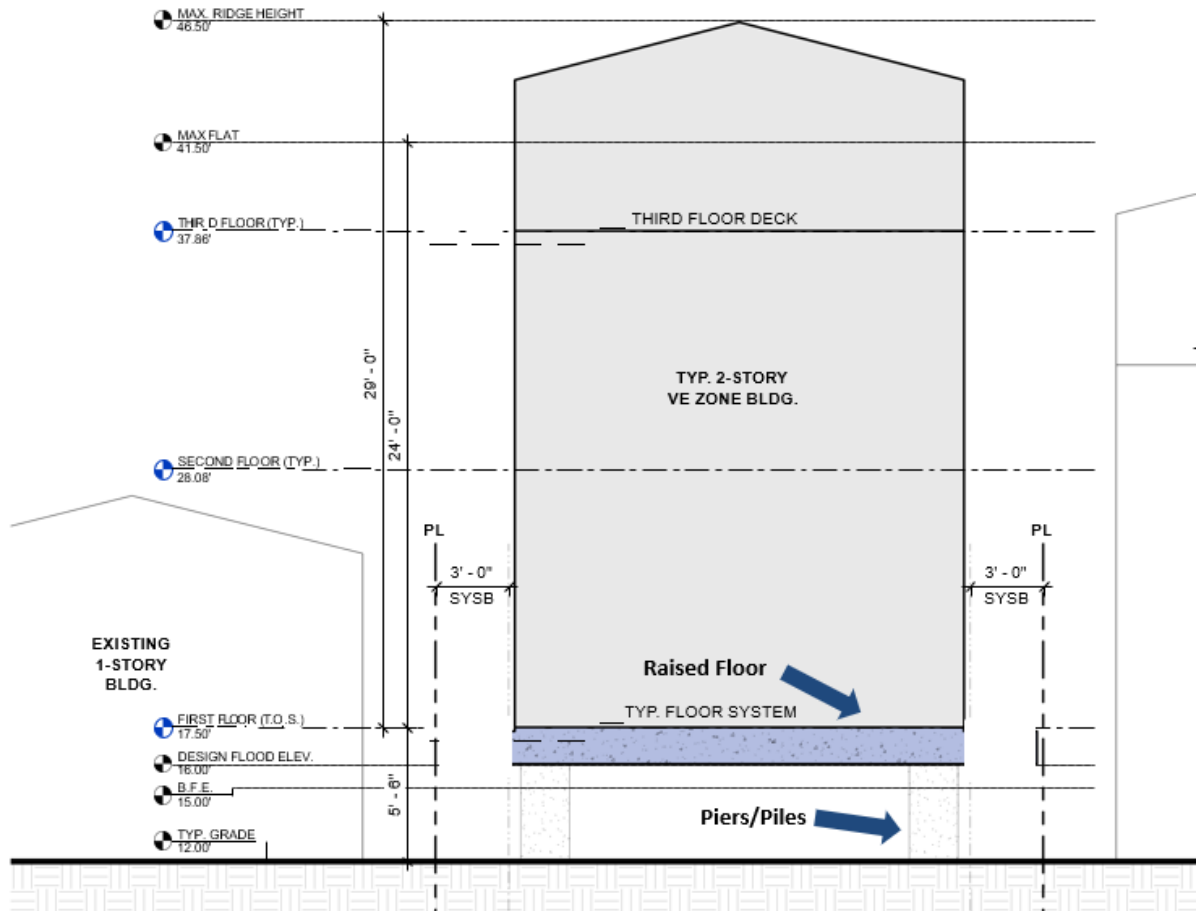


Figure 5 – Section of Raised Foundation

Compliance with the new VE Zone design criteria presents several challenges for new residential development to also meet the requirements of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC). Specifically, the VE Zone design criteria significantly limit means of access to the dwelling, as well as the usability of outdoor areas. The proposed amendments seek to remedy the challenges related to access and usability of outdoor areas.

VE Flood Zone - Community Meeting

On March 14, 2019, City staff hosted a community meeting with the property owners in the affected VE Flood Hazard Area, nearby residents in West Newport, and the design community. The purpose of this meeting was to explain the new FIRMs and design criteria, and to share development standards in Title 20 and Title 21 that may need to be amended to accommodate FEMA compliant designs. Items discussed included challenges of providing enclosed parking space requirements below the base flood elevation and challenges providing access to and from the existing grade to the

elevated structures. Most comments received were related to concerns with insurance coverage, increased construction cost, compatibility of building designs with the neighborhood, and site access.

Code Amendments

On March 26, 2019, the City Council adopted Resolution No. 2019-31 initiating an amendment to Title 20 and Title 21 of the NBMC to modify the setback encroachment regulations for residential properties in the VE Flood Hazard Area (Attachment No. PC 2). Specifically, the proposed amendment is intended to resolve conflicts in the NBMC related to height allowances in setbacks that limit or eliminate access and usability of front, side, and rear setbacks.

Resolution No. 2019-31 included the initiation of other changes to Titles 20 and 21 of the NBMC, such as potential parking adjustments and changes in the methodology for measuring height of a principal structure for affected properties. However, after further analysis and consideration, these potential changes were deemed unnecessary and are not included. For example, the issue of enclosed parking below the BFE was resolved using Building Code and FEMA-compliant alternative materials that break away during a storm event. In other words, garages will continue to be required but will be constructed differently.

Public Engagement

The proposed amendments were presented to the design community on December 2, 2021, and to affected and nearby property owners on January 19, 2022, via virtual community meetings. The recommended allowance for site access encroachments into the front and side setbacks were generally supported. However, several residents raised concerns with respect to maintaining the privacy of adjacent properties, sight distance and safety impacts for corner-lot properties, and visual impacts for properties located behind VE properties.

The proposed code amendments contained in the draft resolution incorporate language that is responsive to and addresses the comments from the public to the greatest extent practicable. Each concern and how it has been addressed is detailed below under the "Community Concerns" section of this report.

City Council - Study session

A study session was held with the City Council on July 26, 2022, to discuss the proposed amendments and provide exhibits showing the potential design of new residential structures built in compliance with the VE Zone requirements (Attachment No. PC 3). The exhibits showed the anticipated conditions or designs with and without the proposed code amendment. Affected owners in the VE Zone and owners within the vicinity of the VE Zone were provided a courtesy notice of the public meeting and a City

“Newsplash” was posted online. At the conclusion of the study session, the City Council directed staff to complete the code amendments allowing maximum utility of setback areas and to prepare the draft language for review by the Planning Commission.

DISCUSSION

The amendments are necessary to provide parity between residential properties located in the VE Zone and typical residential properties throughout Coastal Zone. With exception of the allowable setback encroachments described below and in the attached draft code, all future development within the VE Zone would remain consistent with unchanged applicable standards of the R-1 and R-2 Coastal Zoning Districts. These include setbacks, height, floor area limitations, and parking standards.

Front Setbacks

Issue

Typical residential properties along the beach and boardwalk can achieve seamless indoor and outdoor living with front patios along the sand or boardwalk. As of the effective date of the new FIRMs, properties in the VE Zone are no longer able to achieve this design, as their finished floors are elevated well above the beach or boardwalk. The existing residential development standards in the NBMC limit accessory structures to 42 inches maximum within the front setback. However, in the VE Zone, no patios or decks attached to the principal structure can be located below the elevated first-floor. This significantly limits outdoor living space for the affected properties. Furthermore, no direct access to the ground is provided, as the required stairs and handrails or guardrails exceed allowable height limits in the front setback.

Solution

The proposed changes will allow for raised landings, decks, patios, platforms, stairs, railings, handrails, and similar features to exceed the maximum height limits for accessory structures within front yard setbacks for new residential construction within the VE Zone. Plans are provided in Attachment No. PC 4. A simulation is provided below that highlights the proposed front yard encroachments in red (Figure 6). Figure 7 is provided to show the existing standards for front yard setbacks versus the proposed standards.

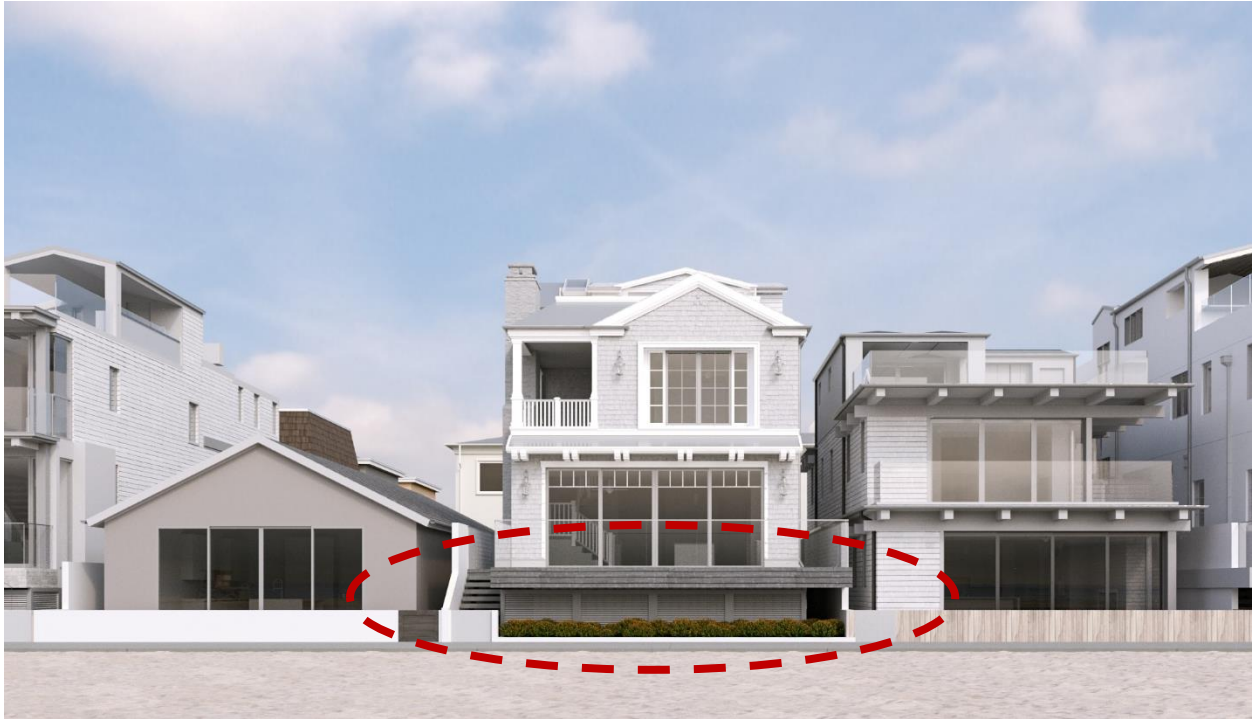


Figure 6 – Simulation of VE Compliant Design with Proposed Code Amendments

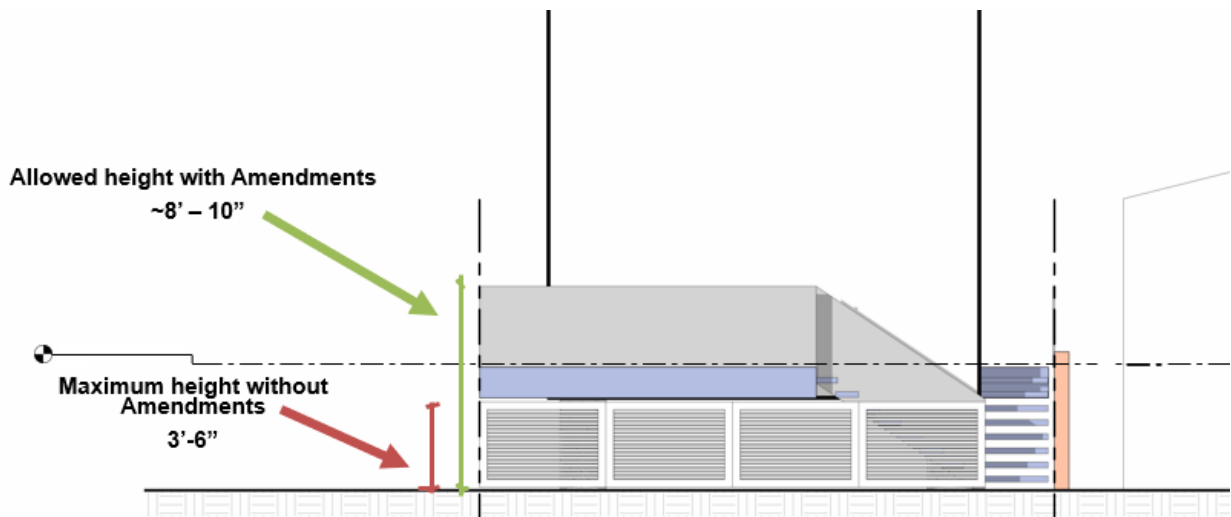


Figure 7 – Existing Versus Proposed Front Setback Height Allowances

Side and Rear Setbacks

Issue

As previously described, new residential construction and substantial improvements in the VE Zone are required to be elevated approximately 3 to 5 feet above existing grade and stairs are necessary to access the dwelling from the ground. Currently, the NBMC limits steps, landings, platforms, and similar features to 18 inches from existing grade in the side and rear setback. An 18-inch-high platform is not sufficient to reach the first floor of the new structure.

Solution

The proposed changes would allow new residential construction to provide direct access to the dwelling from the side or rear setback without the need to reduce the floor area of the dwelling to accommodate the stairs. Plans are provided in Attachment No. PC 4. The required handrails or guardrails would also be allowed as part of the amendment to accommodate access in the side and rear setback areas. Figure 8 is a side elevation of a raised walkway with a guardrail and stairs in the side yard setback, Figure 9 is a rear elevation of proposed side encroachments, and Figure 10 shows a section view of the same side yard encroachments.

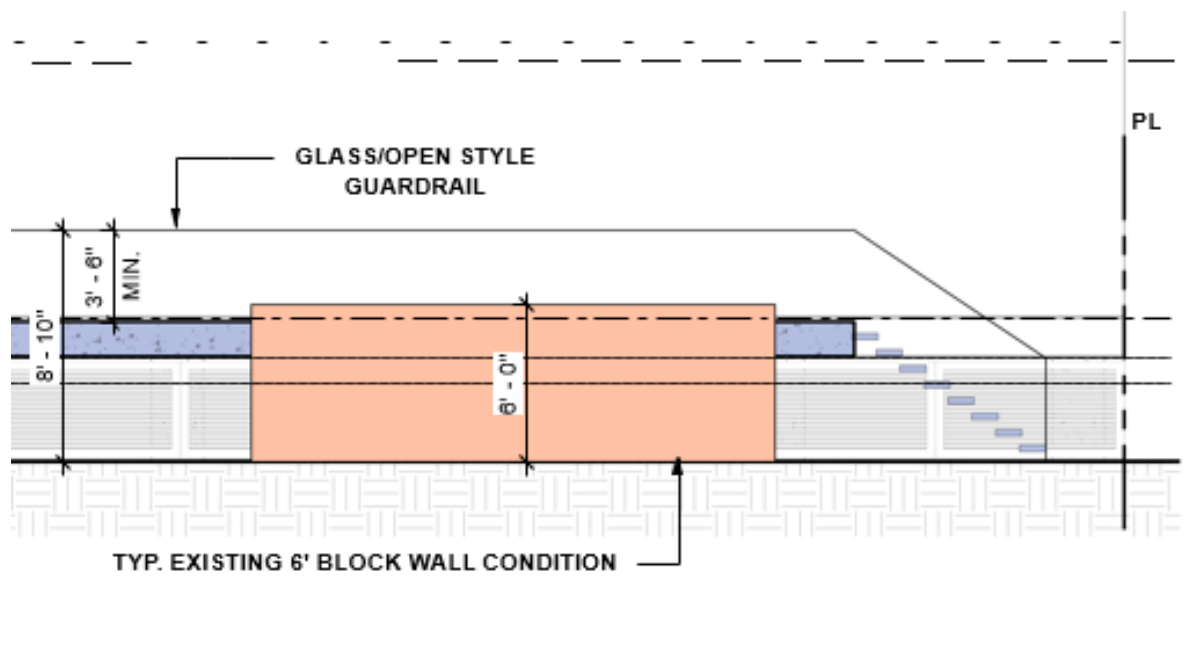


Figure 8 – Elevation of Side Yard with Proposed Amendments

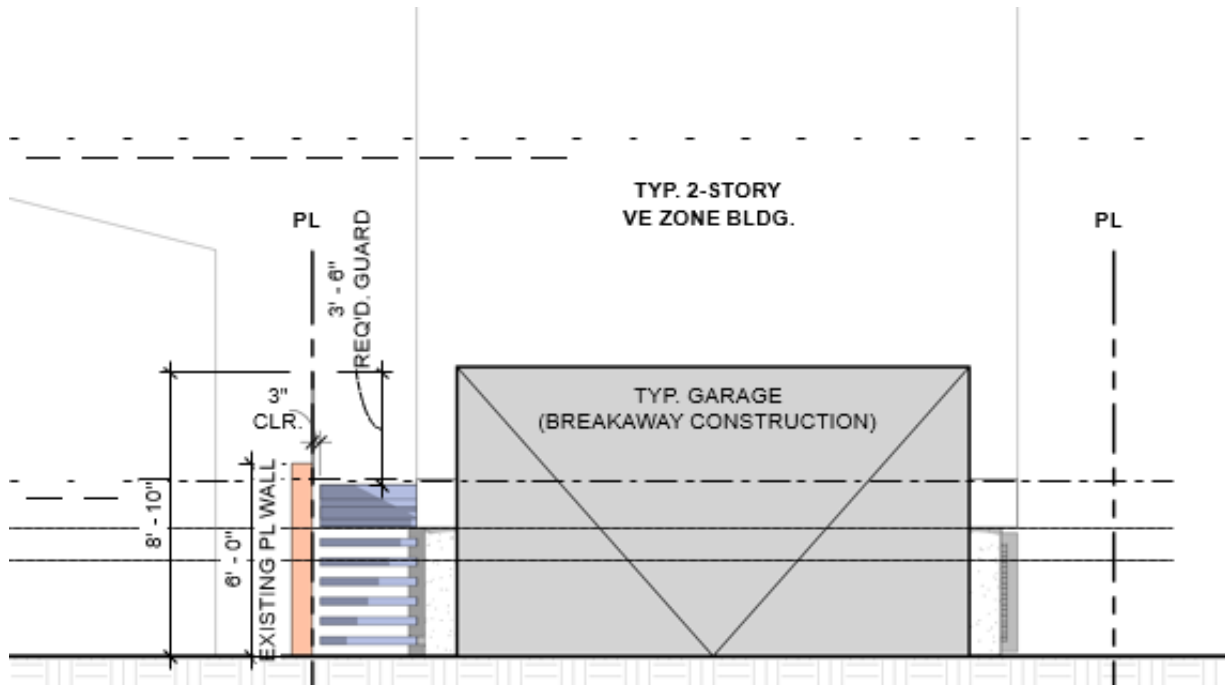


Figure 9 – Rear Elevation of Side Yard with Proposed Amendments

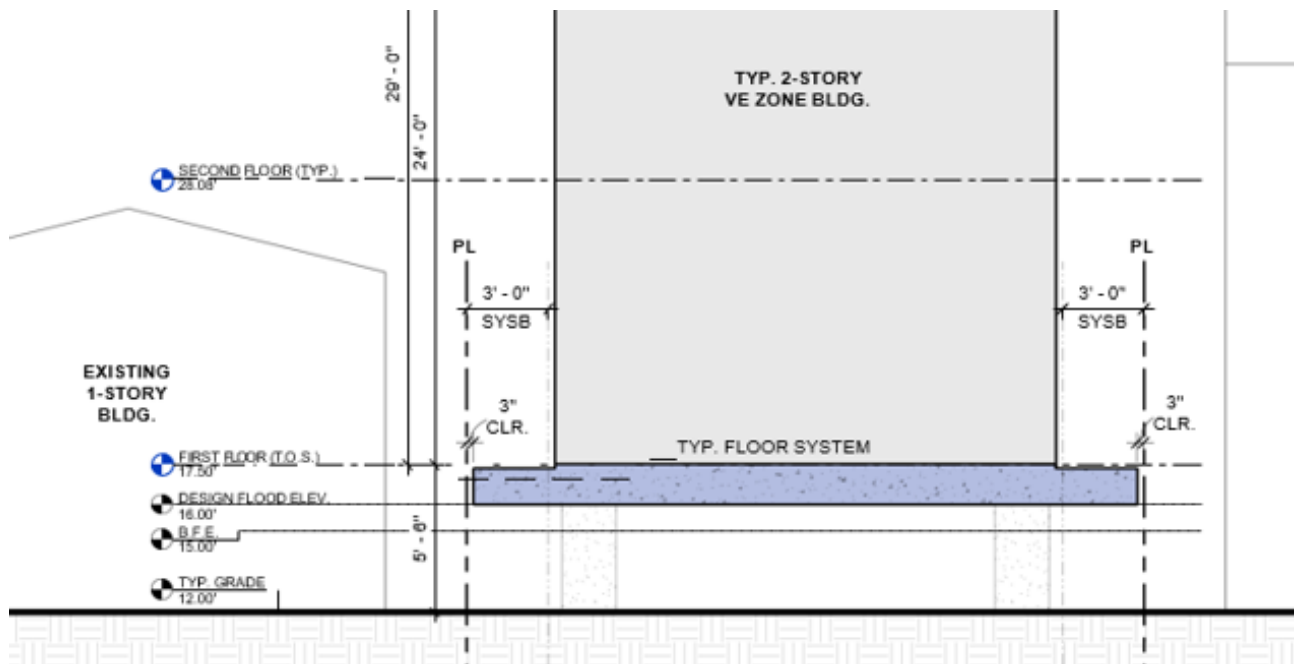


Figure 10 – Section of Side Yard Encroachments with Proposed Amendments

VariANCES

Since adoption of the new FIRMs, the City has received three variance requests for new residential projects in the VE Zone. Each of the three requests is only for relief from the setback standards in Titles 20 and 21 of the NBMC that directly conflict with the ability to comply with FEMA's VE Zone design criteria. Approval and implementation of the proposed amendments would provide for easier compliance and is likely to result in fewer variance requests in the VE Zone.

Community Concerns

Throughout the outreach process, the design community and the affected property owners have been generally accepting of the proposed amendments, but some concerns were raised regarding privacy, the flow of light to neighboring properties, as well as possible visual impacts for properties behind the VE Zone (i.e., the second and third rows of homes behind the beach). The City cannot waive FEMA's design criteria. However, staff is seeking to address concerns related to the proposed code amendment pertaining to setback encroachments.

Therefore, in response to the concerns, staff has included provisions in the draft code language to ensure that any guardrails or handrails that are required for safety purposes are designed to be open style construction so that they are at least 40-percent open throughout. Therefore, the tallest features (i.e., guardrails and handrails) in the side or front setbacks would be glass, plexiglass, lattice, wrought iron, or other similar material that would allow light to pass through to the adjacent neighbors.

Visual impacts have been assessed using 3D models to compare hypothetical residential structures with and without the encroachment areas. Figure 11 below shows the difference between a potential new residential structure that was built with encroachments, and one that was built based on the existing code prior to any amendments¹. The existing NBMC allows for fences and walls to reach 6 feet from existing grade within side and rear setbacks, and the proposed amendments could result in a guardrail that is approximately 3 or 4 feet higher than a potential wall or fence. Therefore, a typical person standing along Seashore Drive (i.e., behind the VE Zone properties) would not have a view through the side yards of the property under existing conditions. The additional 3 or 4 feet of glass or other open style guardrail would minimize the impact on public or private views from this vantage point.

Approximately half of the affected properties in the VE Zone are adjacent to the West Ocean Front Boardwalk, while the other half of properties are adjacent to the beach where the Local Coastal Program allows for private patios to encroach. The NBMC currently allows for balconies to encroach up to 3 feet into the front yard setback for properties along East and West Ocean Front. The proposed code amendments would

¹ Both structures in the 3D model have been designed in compliance with FEMA's design criteria.

allow a deck or balcony to encroach all the way to the front property line, which results in an encroachment of 2 additional feet². The additional 2 feet would not be significant in the context of the approximately 300-foot-wide beach that borders the affected properties. Additionally, most of the existing properties that border the beach have existing private patio encroachments along West Ocean Front, which would reduce or soften the appearance of the structure's bulk and scale.



Figure 11 – Renderings without and with Proposed Encroachments

² Most if not all of the affected properties in the VE Zone have a 5-foot front setback.

For roughly half of the properties adjacent to the West Ocean Front Boardwalk, the existing NBMC allows for fences and walls to reach 42 inches from existing grade along the front property line. The proposed amendments would allow a balcony, deck, or stair to front the boardwalk and the associated safety railings or handrails to reach approximately 8 or 9 feet from existing grade. The required guardrails or handrails would be required to remain 40 percent open to allow the flow of light and reduce the appearance of bulk and scale from the boardwalk. The additional 2 feet of encroachment in the front setback would not be significant.

Attendees also expressed concerns regarding visibility for pedestrians and cyclists using the boardwalk. Therefore, staff has included standard language in the code amendment that regulates visibility at the corners of two intersections. The language is typically applied to properties where driveways or streets intersect, but the logic may be applied to pedestrians and cyclists as well. The draft code language requires that corner lots are developed in a manner that ensures visibility across the corners of the intersecting streets, alleys, sidewalks, private driveways, and the Ocean Front Boardwalk. With that in mind, no encroachments over 30 inches in height from existing grade would be located within the traffic visibility triangle (i.e. the triangular-shaped area on a corner lot formed by measuring the 5 feet from the intersection of the front and street side property lines adjacent to the Ocean Front Boardwalk). Figure 12 shows an example of a traffic visibility triangle. The draft code also notes that all encroachments on corner lots must be reviewed by the Public Works Department for compliance and that encroachments may not be feasible on all corner lots.

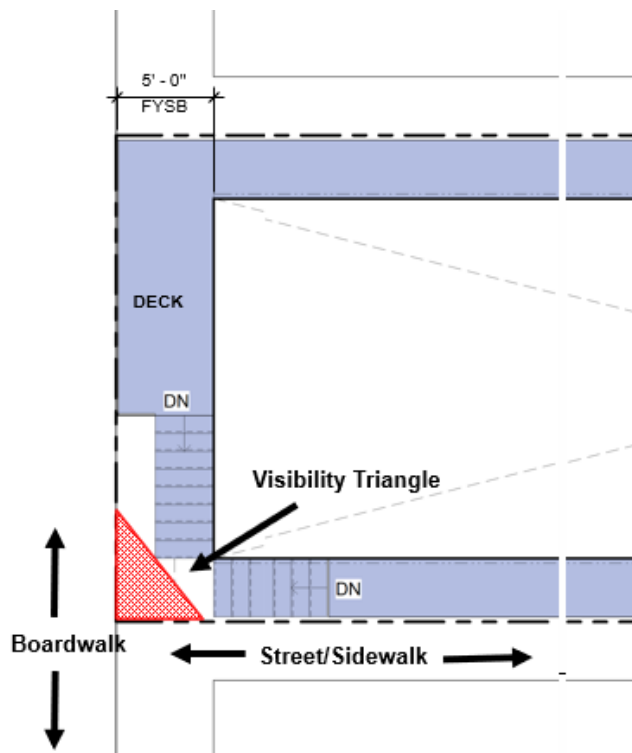


Figure 12 – Visibility Triangle for Intersections of Street and Boardwalk

Summary and Alternatives

In summary, compliance with the new VE Zone design criteria presents several challenges for new residential development and significantly limits means of access to the dwelling as well as the usability of outdoor areas. The proposed amendments seek to remedy the challenges related to access and usability of outdoor areas and provide parity between residential properties in VE Zone and typical residential properties.

If the Planning Commission does not agree with staff's recommendation, the following alternatives are available:

1. The Planning Commission may suggest specific changes that are necessary to alleviate concerns. If any requested changes are substantial, the item should be continued to a future meeting to allow a redesign or additional analysis. Should the Planning Commission choose to do so, staff will return with a revised resolution incorporating new language.
2. The Planning Commission may recommend denial of the suggested code amendments. Should the amendments be denied, new residential structures in the VE Zone will be required to comply with the existing code provisions pertaining to setback encroachments. Denial of the proposed amendment would effectively eliminate use of the front and side yard setback areas.

Environmental Review

This action is not subject to the California Environmental Quality Act ("CEQA") under Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in a physical change to the environment, directly or indirectly.

This action would also be considered exempt from CEQA pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.

The Class 5 exemption allows minor alterations in land use limitations in areas with an average slope of less than 20 percent (20%), which do not result in any changes in land use or density. The proposed amendment seeks to provide flexibility for potential encroachments into side, rear, and front setback areas for properties located within the VE Zone. The proposed changes to the NBMC could result in raised decks, landings, stairs, and other accessory features in the front, side, and rear setbacks for the affected properties. All changes are limited in scope and would only alter regulations for the

height of accessory structures, which would not result in any changes to land use intensity or density.

The exceptions to this categorical exemption under Section 15300.2 are not applicable. The affected location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the properties in the VE Special Flood Hazard Area (excluding intervening rights-of-way and waterways) and posted near the end of the properties in the VE Special Flood Hazard Area at least 10 days before the scheduled meeting, consistent with the provisions of the NBMC. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the city website.

Prepared by:

Submitted by:



Liz Westmoreland, Senior Planner



Jim Campbell
Deputy Community Development Director

BMZ/law

ATTACHMENTS

- PC 1 Draft Resolution
- PC 2 Council Resolution No. 2019-31
- PC 3 3D Renderings
- PC 4 Plans

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Attachment No. PC 1

Draft Resolution

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RESOLUTION NO. PC2023-022

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, RECOMMENDING CITY COUNCIL ADOPT AN AMENDMENT TO TITLE 20 (PLANNING AND ZONING) AND TITLE 21 (LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN) TO ESTABLISH THE SPECIAL FLOOD HAZARD (VE) OVERLAY DISTRICT AND MODIFY DEVELOPMENT STANDARDS FOR NEW RESIDENTIAL STRUCTURES LOCATED WITHIN THE SPECIAL FLOOD HAZARD AREA (PA2018-075)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. On March 21, 2019, new Federal Emergency Management Agency (“FEMA”) Flood Insurance Rate Maps (“FIRMS”) went into effect for Newport Beach. The maps included the new designation of a Special Flood Hazard Area (“VE Zone”) affecting 166 beachfront properties in the West Newport area between 24th Street and 48th Street.
2. New development within the VE Zone is required to meet FEMA construction design criteria. These criteria include elevating structures with pilings, posts, piers, or columns to raise the main residential structure approximately three to five feet from existing grade. In the event of a wave attack, these structures are designed and engineered to allow water to flow below the elevated floor system without damaging the foundation or creating substantial debris.
3. Of the 166 affected properties, 27 properties are within the VE 13 Zone and require elevating structures approximately three feet above existing grade. The remaining 139 properties are within the VE 15 Zone and require elevating structures approximately five feet from existing grade. Compliance with the new VE Zone design criteria presents several challenges for new residential development to also meet the requirements of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (“NBMC”). Specifically, compliance with the VE Zone design criteria significantly limits means of access to the dwelling, as well as the usability of outdoor areas.
4. On March 26, 2019, the City Council of the City of Newport Beach (“City”) adopted Resolution No. 2019-31 initiating an amendment to Title 20 (“Zoning Code Amendment”) and Title 21 (“Local Coastal Program Amendment”) of the NBMC to modify the setback encroachment regulations for residential properties in the VE Flood Hazard Area. Specifically, the Zoning Code Amendment and Local Coastal Program Amendment are intended to resolve conflicts in the NBMC related to height allowances in setbacks that limit or eliminate access and usability of front, side, and rear yard setbacks.

5. Resolution No. 2019-31 included the initiation of other changes to Titles 20 and 21 of the NBMC, such as parking adjustments and changes in the methodology for measuring height of a principal structure for affected properties. However, after further analysis and consideration, these potential changes were deemed unnecessary and are not included in the Zoning Code Amendment and Local Coastal Program Amendment.
6. Since adoption of the new FIRMs, the City has received three variance requests for new residential projects in the VE Zone. Each of the three requests is only for relief from the setback standards in Titles 20 and 21 of the NBMC that directly conflict with the ability to comply with FEMA's VE Zone design criteria. Approval and implementation of the Zoning Code Amendment and Local Coastal Program Amendment would provide for easier compliance and is likely to result in fewer variance requests in the VE Zone.
7. The affected properties are categorized as RS-D (Single Unit Residential Detached) and RT (Two Unit Residential) by the General Plan Land Use Element and are located within the R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential) Zoning District. The subject properties are also located within the Coastal Zone. They are categorized as RSD-D (Single Unit Residential Detached – 20.0-29.9 DU/AC) and RT-E (Two Unit Residential – 30.0 – 39.9 DU/AC) in the Coastal Land Use Plan and are located within the R-1 (Single-Unit Residential) and R-2 (Two-Unit Residential) Coastal Zoning Districts.
8. A draft of this Local Coastal Program Amendment was presented to the design community on December 2, 2021, and to affected and nearby property owners on January 19, 2022, via virtual community meetings. Staff has incorporated their comments into the proposed amendments to the extent feasible.
9. Section 30500 of the California Public Resources Code requires each county and city to prepare a Local Coastal Program ("LCP") for that portion of the coastal zone within its jurisdiction.
10. In 2005, the City adopted the City of Newport Beach LCP Coastal Land Use Plan, as amended from time to time.
11. The California Coastal Commission effectively certified the City's LCP Implementation Plan on January 13, 2017, and the City added Title 21 to the NBMC whereby the City assumed coastal development permit-issuing authority on January 30, 2017.
12. Pursuant to Section 13515 (Public Participation and Agency Coordination Procedures) of the California Code of Regulations Title 14, Division 5.5, Chapter 8, Subchapter 2, Article 5 (Public Participation) ("Section 13515"), a draft of the LCP Amendment was made available and a Notice of Availability was distributed at least six weeks prior to the anticipated final action date.

13. A public hearing was held on May 4, 2023, in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the California Government Code Section 54950 et seq. (“Ralph M. Brown Act”), Chapters 20.62 and 21.62 (Public Hearings) of the NBMC, and Section 13515. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The Zoning Code Amendment and Local Coastal Program Amendment are not subject to the California Environmental Quality Act (“CEQA”) under Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in a physical change to the environment, directly or indirectly.
2. The Zoning Code Amendment and Local Coastal Program Amendment would also be considered exempt from CEQA pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.
3. The Class 5 exemption allows minor alterations in land use limitations in areas with an average slope of less than 20 percent (20%), which do not result in any changes in land use or density. The Zoning Code Amendment and Local Coastal Program Amendment seek to provide flexibility for potential encroachments into side, rear, and front setback areas for properties located within the VE Zone. The proposed changes to the NBMC could result in raised decks, landings, stairs, and other accessory features in the front, side, and rear setbacks for the affected properties. All changes are limited in scope and would only alter regulations for the height of accessory structures, which would not result in any changes to land use intensity or density.
4. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The affected location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

1. Amendments to the NBMC are legislative acts. Neither the City nor State Planning Law set forth any required findings for either approval or denial of such amendments.
2. The Zoning Code Amendment and Local Coastal Program Amendment are consistent with the Coastal Land Use Plan, including Policy 2.7-1, which requires

development to “maintain appropriate setbacks and density, floor area, and height limits for residential development to protect the character of established neighborhoods and to protect coastal access and coastal resources”. The proposed amendments would only apply to private residential single-unit and two-unit properties and does not authorize any changes to public property. The Zoning Code Amendment and Local Coastal Program Amendment do not authorize any new development that will block coastal access, nor do they change the dimensions of setbacks. Instead, it will provide flexibility in the application of height requirements for accessory structures within front, side, and rear setbacks. No changes to density or to maximum height limits of principal structures are proposed as part of this amendment. All new residential development in the VE Zone will require approval of a coastal development permit to evaluate compliance with the Coastal Act, including potential impacts to views and access related to the proposed design and location.

3. The Zoning Code Amendment and Local Coastal Program Amendment are necessary to provide parity between residential properties located in the VE Zone and typical residential properties throughout Coastal Zone. The changes will allow for raised landings, decks, patios, platforms, stairs, railings, handrails, and similar features to exceed the maximum height limits for accessory structures within front, side, and rear yard setbacks for new residential construction within the VE Zone. Typical residential properties along the beach and boardwalk can achieve seamless indoor and outdoor living with front patios along the sand or boardwalk. As of the effective date of the new FIRMs, properties in the VE Zone are no longer able to achieve this design, as their finished floors are elevated well above the beach or boardwalk. The existing residential development standards in the NBMC limit accessory structures to 42 inches maximum within the front setback. However, in the VE Zone, no patios or decks attached to the principal structure can be located below the first-floor elevation. This significantly limits outdoor living space for the affected properties. Furthermore, no direct access to the ground is provided, as the required stairs and handrails or guardrails exceed height limits in the front setback.
4. New residential construction and substantial improvements in the VE Zone are required to be elevated approximately 3 to 5 feet above existing grade and stairs are necessary to access the dwelling from the ground. Currently, the NBMC limits steps, landings, platforms, and similar features to 18 inches from existing grade in the side and rear setback. An 18-inch-high platform is not sufficient to reach the first floor of the new structure. The Zoning Code Amendment and Local Coastal Program Amendment would allow new residential construction to provide direct access to the dwelling from the side or rear setback without the need to reduce the floor area of the dwelling to accommodate the stairs. The required handrails or guardrails would also be allowed as part of the amendment to accommodate access in the side and rear setback areas.
5. With exception of the allowable setback encroachments, all future development within the VE Zone would remain consistent with unchanged applicable standards of the R-1 and R-2 Coastal Zoning Districts. These include setbacks, height, floor area limitations, and parking standards.

6. The recitals provided in this Resolution are true and correct and are incorporated into the operative part of this Resolution.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds this action is not subject to the California Environmental Quality Act (CEQA) under Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in a physical change to the environment, directly or indirectly.
2. The Planning Commission also finds that this Zoning Code Amendment and Local Coastal Program Amendment are categorically exempt from the California Environmental Quality Act under Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The affected location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.
3. The Planning Commission hereby recommends City Council approve an amendment to Title 20 (Planning and Zoning) of the NBMC attached hereto as “Exhibit A” and incorporated herein by reference.
4. The Planning Commission further recommends that the City Council authorize the submittal of an amendment to Title 21 (Local Coastal Program Implementation Plan) of the NBMC, attached hereto as Exhibit “B” and incorporated herein by reference, to the California Coastal Commission for its review and certification.

PASSED, APPROVED, AND ADOPTED THIS 4th DAY OF MAY, 2023.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Curtis Ellmore, Chair

BY: _____
Sarah Klaustermeier, Secretary

Attachment(s): Exhibit A – Zoning Code Amendment No. PA2018-075
 Exhibit B – Local Coastal Program Amendment No. PA2018-075

EXHIBIT “A”

ZONING CODE AMENDMENT NO. PA2018-075

I. Section 20.28.010 (Purposes of Overlay Zoning Districts) of the NBMC shall be amended to read as follows:

E. Special Flood Hazard Area (VE) Overlay Zoning District. The VE Overlay District is intended to modify certain development standards for properties subject to special flood hazards as identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Orange County, California and Incorporated Area with accompanying FEMA Flood Insurance Rate Maps (FIRM).

II. Section 20.28.070 (SPECIAL FLOOD HAZARD AREA (VE) OVERLAY DISTRICT) of the NBMC shall be added to read as follows:

Section 20.28.070 Special Flood Hazard Area (VE) Overlay District.

A. Applicability. This section applies to encroachments for residential properties located in the coastal high hazard area as defined in Chapter 15.50 (Floodplain Management) and identified as VE 13 or VE 15 on the adopted FEMA FIS and FIRMs pursuant to NBMC Section 15.50.070 (Basis for Establishing the Areas of Special Flood Hazard). For purposes of this section, “encroachments” includes, and is limited to, decks, landings, patios, platforms, porches, steps, raised walkways, terraces, or similar structures for access. With the exception of the encroachments authorized herein, all development shall comply with the applicable residential development standards (e.g., floor area limit, setbacks, parking) of the underlying zoning district set forth in the NBMC, except as modified by this section. In situations where an inconsistency occurs between the development standards related to encroachments of the underlying zoning district and the standards in this section, the standards in this section shall apply.

The encroachments allowed by this section shall only apply to new construction, substantial damage, or substantial improvements pursuant to Section 15.50.200 (Coastal High Hazard Areas) for residential properties where the structure is required to raise the foundation above the design flood elevation.

B. Allowed Encroachments in Side and Rear Setbacks. An encroachment may be located within a required side or rear setback area other than those abutting an alley subject to the following restrictions:

1. The design of the encroachment shall comply with the building standards set forth in 15.05.100 (Amendment to Section R301.2.4) including the provisions of either:
 - a. NBMC Chapter 15.50 (Flood Plain Management); or
 - b. American Society of Civil Engineers (ASCE) 24.

2. The design shall comply with Section 20.30.110(A)(1)(c) (Access to Side Setback Area).
 3. For interior lots, the encroachment may be located in one or more side or rear setbacks. There shall be no limit in the length, width, or depth of the encroachment in an interior side or rear setback.
 4. For corner lots, the encroachment may be located in the interior side or rear setback. There shall be no limit in length, width, or depth of the walkway, deck, platform, or similar structure within the interior side or interior rear setback. Encroachments in a side setback facing a street may only be permitted to the minimum extent necessary to provide access to the dwelling. The encroachment shall comply with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).
 5. Excluding required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the principal structure.
 6. Guardrails and handrails in the side and rear setback areas shall consist of open grillwork, wrought iron, latticework, pickets, plexiglass, or similar materials so that at least 40 percent (40%) of the fence or wall is open. Handrails and guardrails shall not exceed the minimum height required by the CBC for safety purposes.
- C. Allowed Encroachments in Front Setbacks. Encroachments may be located within a required front setback area subject to the following restrictions:
1. The design of the encroachment shall comply with the building standards set forth in 15.05.100 (Amendment to Section R301.2.4) including the provisions of either:
 - a. NBMC Chapter 15.50 (Flood Plain Management); or
 - b. American Society of Civil Engineers (ASCE) 24.
 2. For interior lots, excluding the required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the principal structure. There shall be no limit in the length, width, or depth of the encroachment in a front setback of an interior lot.
 3. For corner lots, excluding the required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the structure. There shall be no limit in the length, width, or depth of the encroachment in a front setback adjacent to the beach or permitted Ocean Front Encroachment areas (Appendix C Ocean Front Encroachment Policy Guidelines of Title 21). Encroachments in a front setback abutting the Ocean

Front Boardwalk may be permitted subject to compliance with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).

- a. Corner lots shall be developed in a manner that ensures visibility across the corners of the intersecting streets, alleys, sidewalks, private driveways, and the Ocean Front Boardwalk. Notwithstanding the requirements of this subsection (C), no encroachment over thirty (30) inches in height from existing grade shall be located within the traffic visibility triangle (i.e. the triangular-shaped area on a corner lot formed by measuring the 5 feet from the intersection of the front and street side property lines adjacent to the Ocean Front Boardwalk).
- b. City Traffic Engineer Approval. Improvements, structures, or vegetation that exceed the allowed height limit for visibility in the traffic safety visibility area may be approved by the City Traffic Engineer if it is determined that the location and/or height of the existing or proposed hedge, shrubbery, structure, or other obstruction allows for the unobstructed view of oncoming traffic, bicyclists, and pedestrians from a driver, bicyclists, or pedestrians approaching an intersection.

D. Guardrails and handrails in the side and rear setback shall consist of open grillwork, wrought iron, latticework, pickets, plexiglass, or similar materials so that at least 40 percent (40%) of the fence or wall is open. Handrails and guardrails shall not exceed the minimum height required by the CBC for safety purposes.

E. Third Floor Limitations. All residential structures shall comply with Section 20.48.180 (Residential Development Standards and Design Criteria). For purposes of determining the number of floors within the principal structure, the garage shall be considered the first-floor level. In the case of a split-level design, the Director shall determine which portions of the split-level structure shall constitute a third floor for the purpose of implementing Section 20.48.180 (Residential Development Standards and Design Criteria).

III. Subsection (f) shall be added to Section 20.30.110(D)(1) (General Regulations) of the NBMC to read as follows:

f. Special Flood Hazard Area (VE) Overlay. Encroachments allowed by this subsection shall apply to properties within the VE Overlay except as modified by Section 20.28.070 (VE Overlay). See Section 20.28.070 (VE Overlay) for setback regulations and additional authorized encroachments.

Exhibit “B”

LOCAL COASTAL PROGRAM AMENDMENT NO. PA2018-075

I. Section 21.28.010 (Purposes of Overlay Zoning Districts) of the NBMC shall be amended to read as follows:

F. Special Flood Hazard Area (VE) Overlay Zoning District. The VE Overlay District is intended to modify certain development standards for properties subject to special flood hazards as identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Orange County, California and Incorporated Area with accompanying FEMA Flood Insurance Rate Maps (FIRM).

II. Section 21.28.070 (SPECIAL FLOOD HAZARD AREA (VE) OVERLAY DISTRICT) of the NBMC shall be added to read as follows:

Section 21.28.070 Special Flood Hazard Area (VE) Overlay District

A. Applicability. This section applies to encroachments for residential properties located in the coastal high hazard area as defined in Chapter 15.50 (Floodplain Management) and identified as VE 13 or VE 15 on the adopted FEMA FIS and FIRMs pursuant to NBMC Section 15.50.070 (Basis for Establishing the Areas of Special Flood Hazard). For purposes of this section, “encroachments” includes, and is limited to, decks, landings, patios, platforms, porches, steps, raised walkways, terraces, or similar structures for access. With the exception of the encroachments authorized herein, all development shall comply with the applicable residential development standards (e.g., floor area limit, setbacks, parking) of the underlying zoning district set forth in the NBMC, except as modified by this section. In situations where an inconsistency occurs between the development standards related to encroachments of the underlying zoning district and the standards in this section, the standards in this section shall apply.

The encroachments allowed by this section shall only apply to new construction, substantial damage, or substantial improvements pursuant to Section 15.50.200 (Coastal High Hazard Areas) for residential properties where the structure is required to raise the foundation above the design flood elevation.

B. Allowed Encroachments in Side and Rear Setbacks.

1. The design of the encroachment shall comply with the building standards set forth in 15.05.100 (Amendment to Section R301.2.4) including the provisions of either:

- a. NBMC Chapter 15.50 (Flood Plain Management); or
- b. American Society of Civil Engineers (ASCE) 24.

2. Design shall comply with NBMC Section 21.30.110 (A)(1)(c) (Access to Side Setback Area).
3. For interior lots, the encroachment may be located in one or more side or rear setbacks. There shall be no limit in the length, width, or depth of the encroachment in an interior side or rear setback.
4. For corner lots, the encroachment may be located in the interior side or rear setback. There shall be no limit in length, width, or depth of the walkway, deck, platform, or similar structure within the interior side or interior rear setback. Encroachments in a side setback facing a street may only be permitted to the minimum extent necessary to provide access to the dwelling. The encroachment shall comply with all other development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).
5. Excluding required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the principal structure.
6. Guardrails and handrails in the side and rear setback areas shall consist of open grillwork, wrought iron, latticework, pickets, plexiglass, or similar materials so that at least 40 percent (40%) of the fence or wall is open. Handrails and guardrails shall not exceed the minimum height required by the CBC for safety purposes.

C. Allowed Encroachments in Front Setbacks.

1. The design of the encroachment shall comply with the building standards set forth in 15.05.100 (Amendment to Section R301.2.4) including the provisions of either:
 - a. NBMC Chapter 15.50 (Flood Plain Management); or
 - b. American Society of Civil Engineers (ASCE) 24.
2. For interior lots, excluding the required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the principal structure. There shall be no limit in the length, width, or depth of the encroachment in a front setback of an interior lot.
3. For corner lots, excluding the required guardrails or handrails, the finish surface of the encroachment shall not exceed 6 inches above the finish floor of the structure. There shall be no limit in the length, width, or depth of the encroachment in a front setback adjacent to the beach or permitted Ocean Front Encroachment areas (Appendix C Ocean Front Encroachment Policy Guidelines of Title 21). Encroachments in a front setback abutting the Ocean Front Boardwalk may be permitted subject to compliance with all other

development standards of the underlying zoning district including Section 20.30.130 (Traffic Safety Visibility Area).

- a. Corner lots shall be developed in a manner that ensures visibility across the corners of the intersecting streets, alleys, sidewalks, private driveways, and the Ocean Front Boardwalk. Notwithstanding the requirements of this subsection (C), no encroachment over 30 inches in height from existing grade shall be located within the traffic visibility triangle (i.e. the triangular-shaped area on a corner lot formed by measuring the 5 feet from the intersection of the front and street side property lines adjacent to the Ocean Front Boardwalk).
- b. City Traffic Engineer Approval. Improvements, structures, or vegetation that exceed the allowed height limit for visibility in the traffic safety visibility area may be approved by the City Traffic Engineer if it is determined that the location and/or height of the existing or proposed hedge, shrubbery, structure, or other obstruction allows for the unobstructed view of oncoming traffic, bicyclists, and pedestrians from a driver, bicyclists, or pedestrians approaching an intersection.

D. Guardrails and handrails in the side and rear setback shall consist of open grillwork, wrought iron, latticework, pickets, plexiglass, or similar materials so that at least 40 percent (40%) of the fence or wall is open. Handrails and guardrails shall not exceed the minimum height required by the CBC for safety purposes.

III. Subsection (f) shall be added to Section 21.30.110(D)(1) (General Regulations) of the NBMC to read as follows:

f. Special Flood Hazard Area (VE) Overlay. Encroachments allowed by this subsection shall apply to properties within the VE Overlay except as modified by Section 21.28.070 (VE Overlay). See Section 21.28.070 (VE Overlay) for setback regulations and additional authorized encroachments.

Attachment No. PC 2

Council Resolution No. 2019-31

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RESOLUTION NO. 2019-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, INITIATING AMENDMENTS TO TITLE 20 ENTITLED "PLANNING AND ZONING" AND TITLE 21 ENTITLED "LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN" OF THE CITY OF NEWPORT BEACH MUNICIPAL CODE RELATED TO HEIGHT MEASUREMENT, ACCESSORY STRUCTURES AND RESIDENTIAL OFF-STREET PARKING REQUIREMENTS FOR PROPERTIES LOCATED IN THE VE SPECIAL FLOOD HAZARD AREA (PA2018-075)

WHEREAS, Newport Beach Municipal Code ("NBMC") Section 20.66.020 provides that the City Council of the City of Newport Beach ("City Council") may initiate an amendment to Title 20 with or without a recommendation from the Planning Commission;

WHEREAS, City Council Policy K-1 entitled "General Plan and Local Coastal Program" requires amendments to the City of Newport Beach certified Local Coastal Program codified in NBMC Title 21 to be initiated by the City Council; and

WHEREAS, the City Council desires to amend NBMC Title 20 and Title 21 to modify regulations relating to height measurement, accessory structures and residential off-street parking requirements for properties located in VE Special Flood Hazard Area designated by the Federal Emergency Management Agency ("FEMA") Flood Insurance Rate Maps.

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council hereby initiates amendments to NBMC Title 20 "Planning and Zoning" and Title 21 "Local Coastal Program Implementation Plan" to modify regulations relating to the method of height measurement of buildings and accessory structures, allowed encroachments into required setback areas and parking standards for residential uses for properties located in the VE Special Flood Hazard Area.

Section 2: If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 3: The recitals provided in this resolution are true and correct and are incorporated into the substantive portion of this resolution.

Section 4: The City Council finds the adoption of this resolution is categorically exempt pursuant to Title 14 California Code of Regulations, Section 15262 (Feasibility and Planning Studies) Guidelines for Implementation of the California Environmental Quality Act ("CEQA"). Section 15262 exempts projects involving feasibility or planning studies for possible future actions which the agency, board, or commission has not approved or adopted.

Section 5: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting this resolution.

ADOPTED this 26th day of March, 2019.



Diane B. Dixon
Mayor

ATTEST:



Leilani I. Brown
City Clerk



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

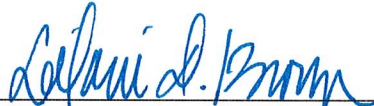

for _____
Aaron C. Harp
City Attorney

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; the foregoing resolution, being Resolution No. 2019-31 was duly introduced before and adopted by the City Council of said City at a regular meeting of said Council held on the 26th day of March, 2019; and the same was so passed and adopted by the following vote, to wit:

- AYES: Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman, Mayor Pro Tem Will O'Neill, Mayor Diane Dixon
- NAYS: None
- RECUSED: Council Member Kevin Muldoon

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 27th day of March, 2019.



Leilani I. Brown
City Clerk
Newport Beach, California



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Attachment No. PC 3

3D Renderings

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21-99



47

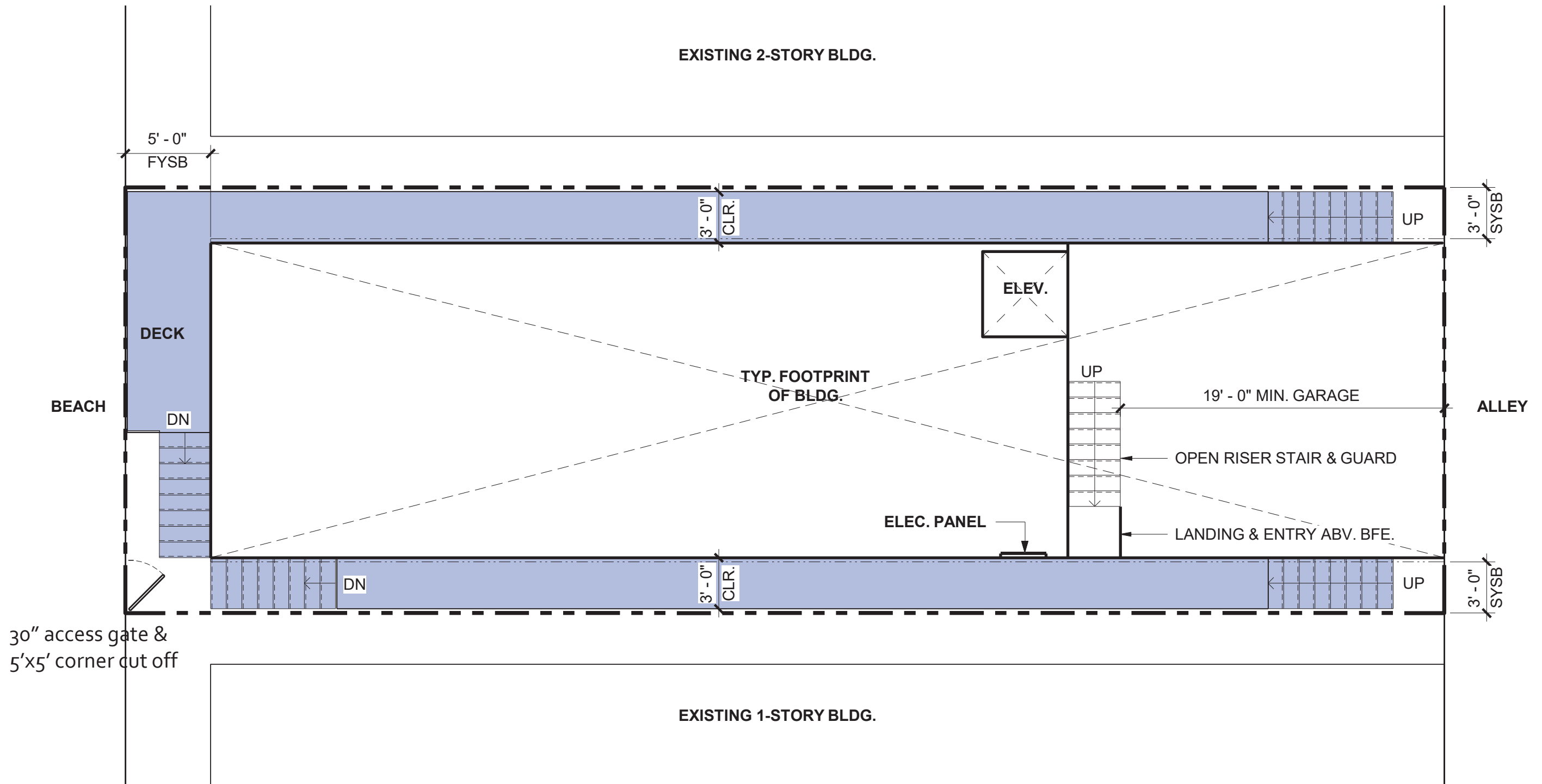
21-100

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Attachment No. PC 4

Plans

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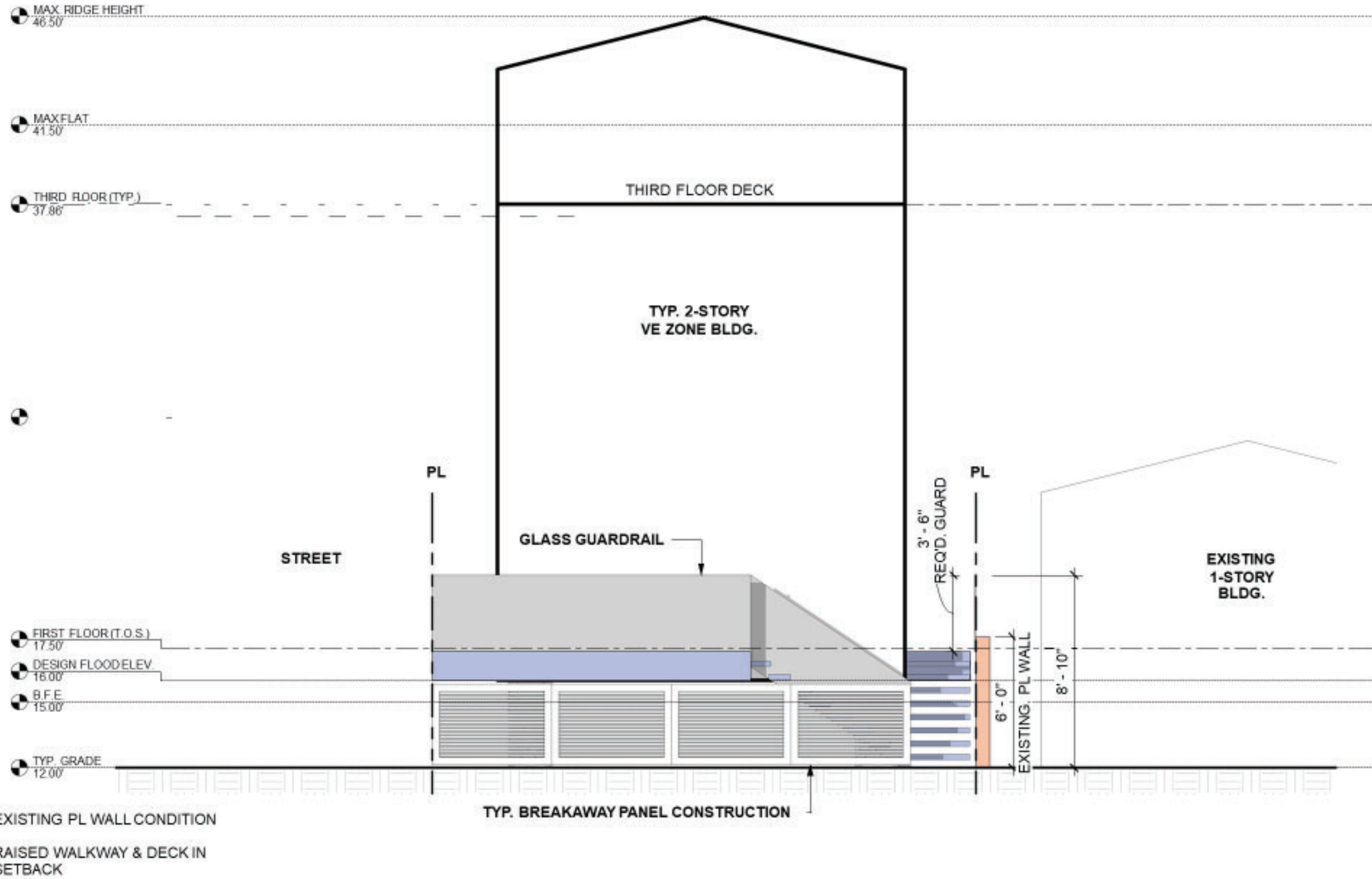
■ RAISED WALKWAY & DECK IN SETBACK

SIDE YARD:

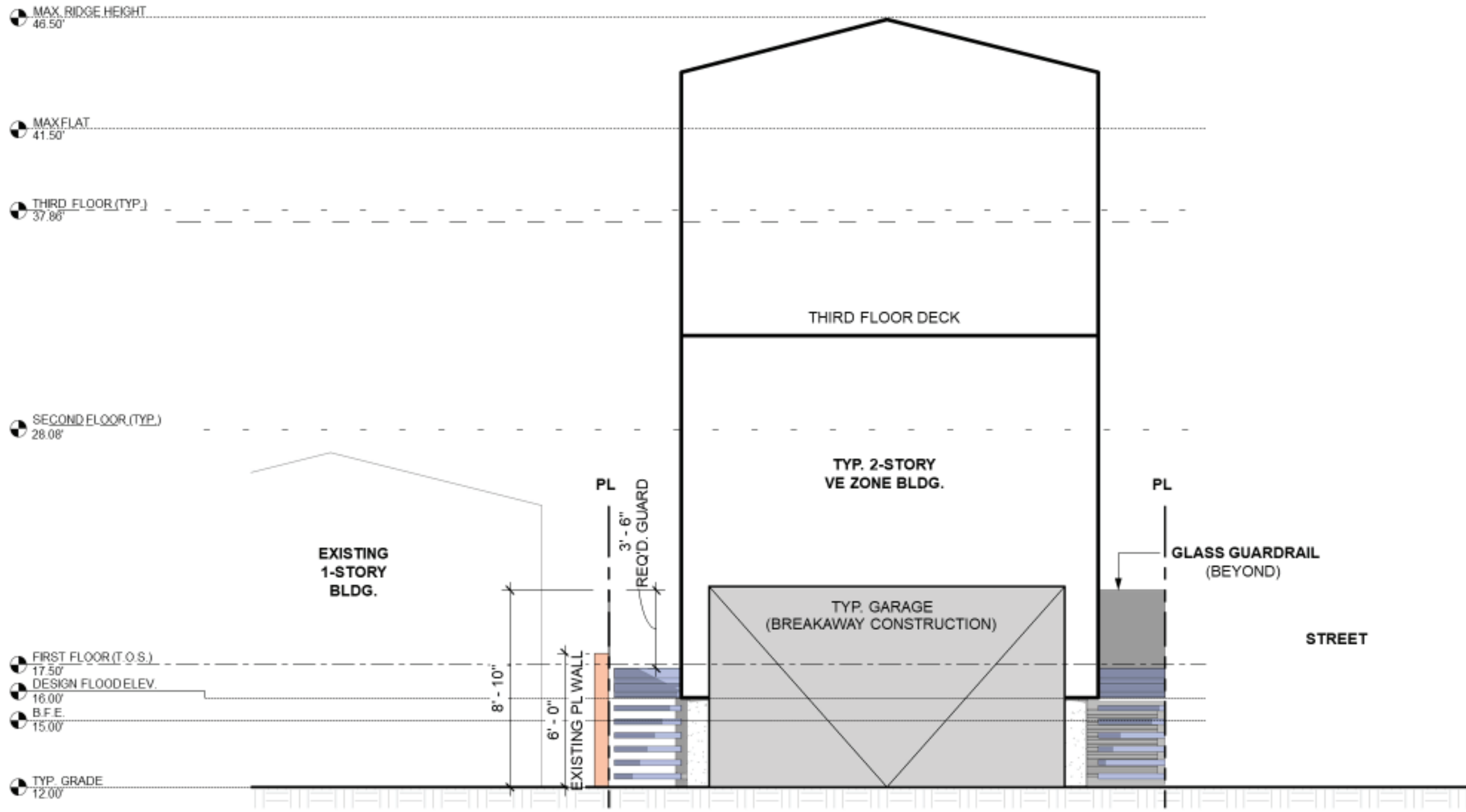
- FULL ENCROACHMENT ON BOTH SIDES
- RAISED WALKWAY WITH GUARDRAILS
- STEPS/STAIRS FOR ACCESS TO GROUND

FRONT YARD:

- FULL ENCROACHMENT
- RAISED DECK WITH GUARDRAILS FROM LOWEST FLOOR
- STEPS/STAIRS FOR ACCESS TO GROUND

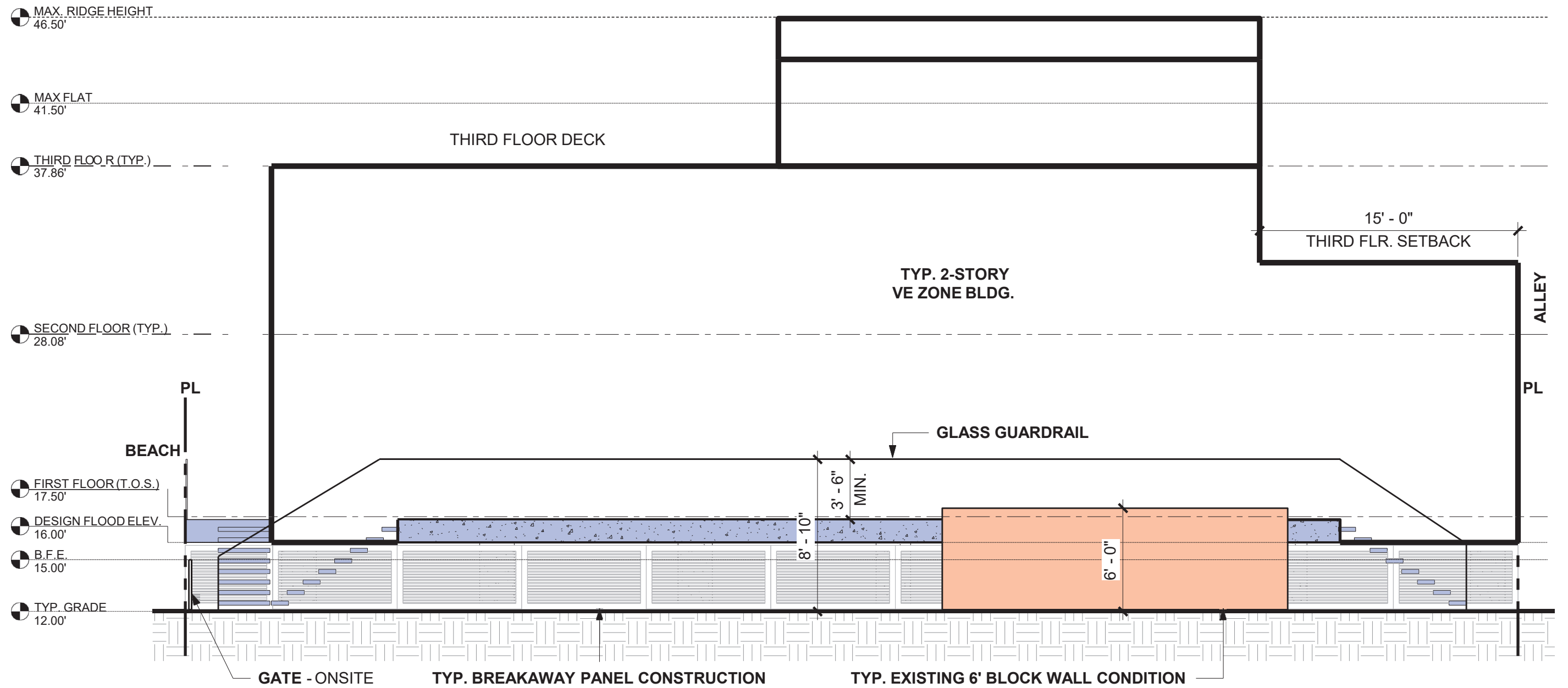


CITY OF NEWPORT BEACH | FRONT ELEVATION - GUARDRAIL ONLY



- EXISTING PL WALL CONDITION
- RAISED WALKWAY & DECK IN SETBACK

CITY OF NEWPORT BEACH | REAR ELEVATION - GUARDRAIL ONLY



- EXISTING PL WALL CONDITION
- RAISED WALKWAY & DECK IN SETBACK

CITY OF NEWPORT BEACH | SIDE ELEVATION - WALL CONDITION



Cross-section to show typical floor system with NO raised walkways on both sides

Attachment F

Written Correspondence

From: [Lee, Amanda](#)
To: [Westmoreland, Liz](#)
Cc: [Rodriguez, Clarivel](#)
Subject: FW: Special Food Hazard (VE) Overlay Code Amendments
Date: May 01, 2023 10:45:41 AM

From: Victoria Sandoval <outlook_A2DC20CB18129392@outlook.com>
Sent: May 01, 2023 10:25 AM
To: Lee, Amanda <ALee@newportbeachca.gov>; rgarciamay@newportbeachca.gov
Subject: Special Food Hazard (VE) Overlay Code Amendments

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

With regard to subject proposed amendments:

What criteria will be used to determine whether elevation can be 3, 4, or 5 feet for new construction?

Will increased elevation permit exceeding the current height restrictions by the same amount?

Thank you for the opportunity to comment.

Sent from [Mail](#) for Windows



JACOBS PINE CONSULTING, INC.
TAX INCENTIVE SPECIALISTS

2627 Manhattan Beach Blvd., Suite 212
Redondo Beach, CA 90278

Phone (310) 727-9911

Fax (310) 727-9912

May 2, 2023

City Council
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

RE: Special Flood Hazard Overlay Code Amendments

To the City Council Members:

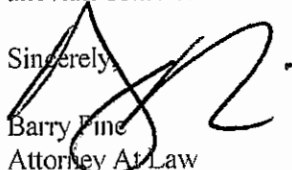
My name is Barry Pine and I own an Oceanfront Duplex Property on the boardwalk in Newport Beach (3509 Seashore Drive) that was recently designated by FEMA as being in the VE Special Flood Zone area. When I purchased the property back in September of 2010, one of the most important factors in my decision was the ability to make substantial improvements or new construction on my property so that when I have a family, we would be able to live and raise our family in Newport Beach.

In August of 2020, after our son turned 1, we decided to engage an Architect to build our family home. It has now been almost 3 years that we have been struggling to come up with a viable home plan to incorporate the living needs of a family of 4, combined with the new FEMA Flood Zone rules, as well as the additional Coastal Commission demands of having an additional separate unit (ADU/Jr ADU) to not reduce housing density in the beach area.

Our property is only 25 feet wide which equates to only 18 ½ feet wide after side setbacks. In addition to the hardship put on us with this surprise increased building expense of requiring the house to be built on Caissons and breakaway walls in the garage area, we have been extremely frustrated in trying to get a separate entrance to the ADU/Jr ADU unit, as well as into our house (that will now have to be 5 feet above the grade) without compromising the livable space restrictions working with only 18 ½ feet. This same issue arises again in trying to get down from the deck or house to enjoy access to the beach and boardwalk oceanfront. This is arguably the most valuable aspect of my property that has currently been reduced by the new FEMA Flood Zone rules.

I am in full support of the proposed Special Flood Hazard Overlay Code Amendments. These proposed changes which allow raised walkways, decks and stairs with necessary guardrails to encroach into the front, side and rear setback areas would provide reasonable access and use to our planned home and would alleviate some of the financial burden that we have suffered from the new FEMA Flood Zone rules.

Sincerely,


Barry Pine
Attorney At Law

From: [Janet Brown](#)
To: [Planning Commissioners](#)
Cc: [Westmoreland, Liz](#)
Subject: Special Flood Hazard Overlay Code Amendment (PA2018-075)
Date: May 03, 2023 12:27:06 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

To Members of the Newport Beach Planning Commission:

I have read the staff report regarding the proposed code amendment, and appreciate the analysis staff has given to address the issues.

My concern relates to the proposal to allow a deck or balcony to encroach all the way to the front property line in the required front yard setback. The existing code allows decks and balconies to encroach 3 feet into the typical 5-foot front yard setback.

We own a duplex on the boardwalk and completed construction in 2017. Allowing decks and patios to encroach to the front property line would have a significant visual impact on our home and on adjacent properties which have been developed to current standards.

Such an encroachment would not be consistent with the character of established decks and patios along the boardwalk and ocean front. Furthermore, new development can still achieve a seamless indoor and outdoor living space with decks and patios that encroach 3 feet into the front setback.

I respectfully request that the Planning Commission retain the existing development standard which allows decks and balconies to project a maximum of 3 feet into the required front yard setback.

Thank you for your consideration.

Sincerely,
Janet Brown

Sent from my iPad

From: [Grant Dietz](#)
To: [Planning Commissioners](#)
Subject: Special Flood Hazard, VE-13
Date: May 04, 2023 2:31:14 PM

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Planning Commissioners,

My home at 107 27th St. is directly behind four oceanfront cottages, all eventually headed toward new construction. The city and FEMA's new rules affect me to an unbelievable extent. The additional height, size and potential encroachment into the set-backs will reduce my light, ocean sound, breeze, and views.

Please mandate "cutouts" for elevated access to oceanfront properties rather than allowing them to build into the setbacks.

I understand that FEMA and our city do not want to infringe on personal property rights of home owner's. But, how is it that oceanfront rights are protected, but the rest of us down the street must suffer massive structures to our view side. And, somehow "wave action" and high water levels won't get to my home?

All of these new rules will permanently alter the character of our community. Drive 20 minutes north to Surfside Beach to see what we shall be as these monstrosities are built along our coast. The Sunset Beach communities have allowed oceanfront homes to completely block everyone else.

(And they don't even allow building into setbacks.)

Thank you for your delicate consideration of this matter. Please forward this email to all parties responsible for these changes.

I am available to discuss further at your convenience.

Sincerely,

*Grant G. Dietz
Sr. Financial Consultant*

Pacific Mortgage Bankers
18851 Bardeen Avenue
Irvine, CA 92612

949.637.2008
949.265.9031 Fax

CA DRE 01079680
NMLS 253390 & 337588

"A referral is guiding someone you care about, to someone you trust"